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Contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretary-General

The Secretariat has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, pursuant to General Assembly resolution 72/156.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report, the Special Rapporteur addresses the contemporary use of digital technology in the spread of neo-Nazi and related intolerance. She identifies recent trends and manifestations of glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. She highlights States' obligations under human rights law to counter such extreme ideologies online, as well as the responsibilities of technology companies in the light of human rights principles. She also identifies States and technology companies' good practices, actions and initiatives with regard to tackling racist hate speech online generated by neo-Nazi and other hate groups.

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I. Introduction

1. The present report is submitted to the General Assembly pursuant to its resolution 72/156, in which it requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to submit to it at its seventy-third session a report on the implementation of that resolution on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. In the present report, the Special Rapporteur addresses the role of digital technology in the spread of neo-Nazism and related ideology. She highlights trends in the glorification of Nazism, neo-Nazism and related ideology online; the consequences of those practices; the applicable international and regional human rights legal frameworks; and good practices by States, technology companies and civil society actors that show promise for restricting the use of digital technologies to propagate hate.

2. As highlighted in previous reports of the mandate holder (A/67/326 and A/HRC/26/49), digital technology, including the Internet and social media platforms, has become an essential and central component of people's everyday lives all over the world. For many, the Internet — and social media platforms especially — have become a primary source of information and means of communication. Notwithstanding the positive societal transformation that has been unlocked by digital technological developments, these developments have also aided the spread of hateful movements, including neo-Nazism or associated ideology.[1]

3. Nazi and neo-Nazi ideologies reject racial equality and advocate for extreme violence if necessary to achieve their vision of oppression and discrimination (see A/HRC/38/53, para. 5). At the core of those ideologies is visceral hatred of Jews and a commitment to anti-Semitism. Neo-Nazism also targets many other racial, ethnic and religious groups, including Slavs, Roma, Africans and people of African descent and Muslims. It further vilifies lesbian, gay, bisexual, transgender and intersex people, persons with disabilities and in some cases women.

4. Online communities can function as safe harbours for groups that espouse racial superiority and intolerance, allowing them to disseminate their ideology, organize meetings and violent protests, fundraise and engage in other activities that would be more difficult in the real world (ibid., para. 27). The anonymity permitted by digital technology, as well as its relatively easy transnational accessibility, have aided in the shift of extremist ideology closer to the mainstream. The result has been an increase in the presence of groups and individuals espousing ideologies of hatred online.[2] As one commentator noted, a monitoring group that had recorded only 3 racist websites in 1995 had by 2011 recorded 14,000 such websites and forums.[3]

5. The harmful effects and human rights violations associated with racist and xenophobic hate groups online do not affect all members of society equally. Jews remain especially vulnerable to anti-Semitic attacks online, as will be discussed throughout the present report, but others are also affected. One study from the United States of America, for example, found that racial minorities there were more likely to

[1] N. Alkiviadou, "Regulating Internet Hate: A Flying Pig", *Journal of Intellectual Property, Information Technology and E-Commerce* (2016), available at www.jipitec.eu/issues/jipitec-7-3-2016/4511.

[2] C. E. Ring, "Hate Speech in Social Media: An Exploration of the Problem and Its Proposed Solutions", Journalism and Mass Communication Graduate Theses and Dissertations, No. 15 (2013), available at https://scholar.colorado.edu/jour_gradetds/15/.

[3] Alkiviadou, "Regulating Internet Hate".

face online racial or ethnic harassment than whites, and similarly women were more likely to experience gender-related harassment online than men.[4]

II. Use of digital technologies in the propagation of neo-Nazi and related ideology

A. Propaganda, racist and intolerant mythology, hate speech dissemination and incitement to violence

6. One of the primary uses of digital technologies by neo-Nazi groups is as a means for the broad dissemination of their ideology. As a result, digital platforms have become vehicles for the spread of hate speech and incitement to discrimination, intolerance and violence on racial, ethnic, religious and related grounds. The largely unregulated, decentralized, cheap and anonymizing nature of the Internet has allowed such groups to for networks across borders[5] and amplify their hate-filled messages. According to one study, since 2012, the presence of white nationalist movements on Twitter has increased by more than 600 per cent. Furthermore, one of the highest trending themes on Twitter among white nationalists was the concept of "white genocide", defined as the endangerment of the "white race" by the increasing diversity of the modern societies.[6]

7. In one country, a survey concluded that at least two thirds of the population relied on social media platforms to receive information and have access to news content.[7] In that context, neo-Nazis and other hate groups have used such platforms to share content supporting their discredited ideas, including harmful stereotypes against stigmatized groups they target online, on a scale that would be difficult to achieve offline. According to a recent study, right-wing social network users overwhelmingly consume and relay low-quality, extremist, sensationalist and conspiratorial "news",[8] which conveys stereotypes and related propaganda, making violence against targeted groups more acceptable and arguably more likely.[9] Much like Nazi propaganda and disinformation strategies before and during the Second World War,[10] neo-Nazi and other hate groups rely heavily on racist memes and imagery to serve their interests and circulate harmful stereotypes about Muslims, Jews, people of African descents, migrants, as well as lesbian, gay, bisexual,

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[4] Pew Research Center, "Online Harassment 2017" (July 2017), available at http://assets.pewresearch.org/wp-content/uploads/sites/14/2017/07/10151519/PI_2017.07.11_Online-Harassment_FINAL.pdf.

[5] United Nations Educational, Scientific and Cultural Organization (UNESCO), *Youth and Violent Extremism on Social Media: Mapping the Research* (Paris, 2017), p. 19. Available at http://unesdoc.unesco.org/images/0026/002603/260382e.pdf.

[6] J. M. Berger, "Nazis vs. ISIS on Twitter: A Comparative Study of White Nationalist and ISIS Online Social Media Networks" (September 2016), p. 3.

[7] Pew Research Center, "News Use Across Social Media Platforms 2017" (September 2017), available from www.journalism.org/2017/09/07/news-use-across-social-media-platforms-2017/.

[8] Computational Project Research Project, "Polarization, Partisanship and Junk News Consumption over Social Media in the US" (6 February 2018), available from http://comprop.oii.ox.ac.uk/research/polarization-partisanship-and-junk-news/.

[9] K. Chahal, *Supporting Victims of Hate Crime: A Practitioner's Guide* (Bristol, Policy Press, 2016); D. Keats Citron and H. L. Norton, "Intermediaries and hate speech: fostering digital citizenship for our information age", *Boston University Law Review*, vol. 91 (2011), p. 1437; T. Morris, "Networking vehement frames: neo-Nazi and violent jihadi demagoguery", *Behavioural Sciences of Terrorism and Political Aggression*, vol. 6, No. 3 (2014), pp. 163–182, at pp. 163–171; and L. M. Woolf and M. R. Hulsizer, "Intra- and inter-religious hate and violence: a psychosocial model", *Journal of Hate Studies*, vol. 2, No. 5 (2003), pp. 5–25.

[10] United States Holocaust Memorial Museum, "Nazi propaganda", available at www.ushmm.org/collections/bibliography/nazi-propaganda#h112.

transgender and intersex people and women. Online news outlets closely linked to neo-Nazi ideology contribute greatly to the spread of disinformation and neo-Nazi propaganda. They actively incite supporters to comment and share offensive content via their own social networks and channels, and also rely on journalists, bloggers or others to help spread content.[11]

8. Anti-Semitic hate speech has been a persistent problem in social media. For example, in 2016, some Twitter users, including neo-Nazis, started using "triple parentheses" around the names of journalists and others they believed to be Jewish in order to single them out. That practice was used as a threatening gesture and to undermine the expertise and credibility of the targeted individuals.[12]

9. As mentioned in the Special Rapporteur's report to the Human Rights Council (see A/HRC/38/53, para. 31), YouTube remains the main video-sharing platform globally, including for extremist and hate supporters. According to one commentator, a wide portion of YouTube channels, content and user comments involve the exchange and transmission of racist, misogynistic and homophobic expression against groups stigmatized by neo-Nazis.[13] With over 1.5 billion viewers a month and 400 new hours of video uploaded every minute,[14] YouTube is an essential tool of communication for neo-Nazi and other hate groups and to broadcast to a large audience their propaganda. Many of those videos, hosted on channels containing hateful content, have received more than 100,000 views.[15] For example, in 2013, a six-and-a-half-hour video entitled "Adolf Hitler: The Greatest Story Never Told", hosted on YouTube, became the most shared video with white nationalist content.[16] The video advances a pro-Nazi revisionist account and remains available to date on the platform. Usually, neo-Nazis and hate groups create videos to distort reality and create propaganda content, often manipulated or edited to serve their interests and advance their ideas to create false images.[17] Furthermore, the recommendations algorithm and "autoplay" function of YouTube may serve hate groups' objectives in directing viewers to videos on the basis of videos previously watched, often towards more extreme content.[18]

10. YouTube has also been a hotbed for neo-Nazi music videos that advocate and glorify violence and incite mass killings of Muslims, Jews and other groups. Hate music videos usually celebrate the Holocaust, reference anti-Semitic conspiracy theories and other related racist hate speech.[19] After the white supremacist event that took place in Charlottesville, United States, in August 2017, several online music

[11] A. Marwick and R. Lewis, "Media Manipulation and Disinformation Online" (2017), p. 3. Available at https://datasociety.net/pubs/oh/DataAndSociety_MediaManipulationAndDisinformationOnline.pdf.

[12] Anti-Defamation League, "Hate in Social VR", available at www.adl.org/resources/reports/hate-in-social-virtual-reality#cautionary-tales-hate-bias-and-harassment-in-video-games-social-media-and-the-tech-industry.

[13] Ring, "Hate Speech in Social Media".

[14] Bob Moser, "How YouTube became the worldwide leader in white supremacy", *New Republic*, 21 August 2017, available at https://newrepublic.com/article/144141/youtube-became-worldwide-leader-white-supremacy.

[15] Ring, "Hate Speech in Social Media".

[16] Berger, "Nazis vs. ISIS on Twitter", p. 11.

[17] B. Mock, "Neo-Nazi groups share hate via YouTube", Southern Poverty Law Center, 20 April 2007, available at https://www.splcenter.org/fighting-hate/intelligence-report/2007/neo-nazi-groups-share-hate-youtube.

[18] Z. Tufekci, "YouTube, the Great Radicalizer", *New York Times*, 10 March 2018, available at https://www.nytimes.com/2018/03/10/opinion/sunday/youtube-politics-radical.html.

[19] N. Zuo, "YouTube's neo-Nazi music problem", *BBC*, 20 March 2018, available at https://www.bbc.co.uk/news/blogs-trending-43416117.

platforms took down neo-Nazi related music from their platforms.[20] However ensuring removal of racist content on line remains difficult.

11. Neo-Nazi and other hate groups have also used the Internet and social platforms to promote their violent actions. For example, Anders Breivik, who perpetrated xenophobic killings in Norway in 2011, published an anti-Muslim manifesto on his Twitter and Facebook profiles. Dylann Roof, a white nationalist who was charged with killing nine black people in a South Carolina church in the United States in June 2015, also published online a racist manifesto weeks before the shooting, along with photographs of himself with weapons and white supremacist related emblems.[21]

12. The strategy of some neo-Nazi and related organizations is to produce racist content in the guise of scientific or fact-based accounts, but that nonetheless promotes hateful falsehoods.[22] For many years, hate groups supporters have worked on their discourse in an attempt to "intellectualize" neo-Nazism, white supremacy and other related ideology, in the hope that their ideas would become a feature of public discourse.[23] Stormfront, one of the oldest and most influential racial supremacist websites, took that approach. Launched in 1995 and shut down in August 2017, the rhetoric on that website evolved overtime to mask hate speech with more acceptable-seeming discourse.[24]

B. Recruitment, networking and fundraising

13. Hate groups that embrace neo-Nazi and related ideology rely increasingly on the Internet and social media platforms to recruit new members into their ranks. Many use them to decentralize their recruitment and target specific groups of people, especially young people, owing to their widespread use and consumption of new technologies.[25] The most popular recruitment and networking platforms include Facebook, Twitter and YouTube. Twitter is especially popular for group coordination and for keeping neo-Nazis and their sympathizers up-to-date on relevant activities.[26] Before it was shut down in 2017, Stormfront served as a centralized forum where neo-Nazis and related hate groups could connect and recruit new supporters from all over the world. It also had a discussion section for young people, a section for women and national and regional areas.[27] Without ever meeting in person, participants were able to advance their cause with limited interference.

14. Facebook is used to identify like-minded individuals,[28] engage in private discussions online, and coordinate in-person meetings.[29] For example, in a short period, a Scandinavian far-right and anti-refugee organization was able to create a network of Facebook groups in order to communicate efficiently in gathering new

[20] J. Roettgers, "Spotify Starts Banning Neo-Nazi Bands; Google, Deezer and CD Baby Pledge to Follow Suit", *Variety*, 17 August 2017, see at https://variety.com/2017/digital/news/spotify-deezer-cd-baby-nazi-bands-1202531578/.

[21] Berger, "Nazis vs. ISIS on Twitter", p. 4.

[22] UNESCO, *Youth and Violent Extremism on Social Media*, p. 23.

[23] Marwick and R. Lewis, "Media Manipulation and Disinformation Online", p. 11.

[24] UNESCO, *Youth and Violent Extremism on Social Media*, p. 23.

[25] Pew Research Center, "Teens, Social Media & Technology 2018" (May 2018), available at www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/.

[26] UNESCO, *Youth and Violent Extremism on Social Media*, p. 24.

[27] B. Galloway and R. Scrivens, "The hidden face of hate groups online: a former's perspective", *VoxPol*, 3 January 2018, available at http://www.voxpol.eu/hidden-face-hate-groups-online-formers-perspective/.

[28] UNESCO, *Youth and Violent Extremism on Social Media*, p. 15.

[29] A. Sankin, "The Hate Report: How white supremacists recruit online", *Reveal*, 12 January 2018, see https://www.revealnews.org/blog/the-hate-report-how-white-supremacists-recruit-online/.

members and supporters in other European and American countries. Neo-Nazi supporters share information, content, memes and images on Facebook, but these supporters mainly use the platform to create groups and organize events.[30] The online groups aim to develop their sense of community and help to rally the so-called "lone actors". They also create an opportunity for small or dispersed white supremacist groups, dedicated to the propagation of racial hatred in the United States and Europe, to converge transnationally.[31] It seems that many far-right groups use a combination of public groups, which anyone can join, as well as closed groups, which anyone can search for but which require approval to join, and secret groups, which are invite-only. When a person requests entry to a closed neo-Nazi group, they are usually required to go through a vetting process, such as uploading a video pledging one's allegiance to the cause or submitting to an interview over Skype.[32] Those methods usually render difficult the monitoring of hate content by Facebook's moderation team.

15. Sustainable online recruitment and networking relies on the use of racially coded messaging in order to avoid outright condemnation. For example, in 2016, "Pepe the Frog" which was originally a cartoon character without any racist or political connotations, became associated with the so-called alt-right movement, which includes neo-Nazis, white supremacists and other hate groups among its members. As a result, the image of Pepe the Frog on mainstream social media became a unifying symbol for those sharing racist views, especially those advocating anti-Semitism. The character was widely displayed during the Charlottesville white supremacist event in 2017.[33]

16. In order to attract young recruits, extremist groups use video games propagating ideologies of racial superiority and racial hatred. In 2010, a study found that hate-based videogames portrayed most hate groups positively and promoted discrimination and even extreme violence towards groups of people considered as enemies, such as blacks and Jews. The games were often modified versions of classic videogames in which the original enemies were replaced with religious, racial and/or ethnic minorities. The main purpose of the videogames is to indoctrinate players with white supremacist ideology and allow those who already hold racist ideologies to rehearse aggressive scripts toward minorities online, which may later be acted upon offline. Videogames may also have their own discussion forums, chatrooms and microblogging tools. These means are also used to spread propaganda and recruit new young followers. Some experimental social psychologists have argued that playing extensively violent videogames may result in increasing hostile expectations and aggressive behaviours. As mentioned in her report to the Human Rights Council, the Special Rapporteur notes that, while research suggests a correlation between youth violence and extremist propaganda, the exact roles of the Internet and social media in contributing to any radicalization process needs further exploration.[34]

17. Hate groups have also relied considerably in recent years on online platforms to plan, fundraise and circulate information about public events, such as rallies, demonstrations and events acts of violence. For example, a media report cited the website Discord, a group chat platform for gamers, as central to the planning of the

[30] J. C. Wrong, "How Facebook groups bring people closer together — neo-Nazis included", *The Guardian*, 31 July 2017, available at https://www.theguardian.com/technology/2017/jul/31/extremists-neo-nazis-facebook-groups-social-media-islam.

[31] UNESCO, *Youth and Violent Extremism on Social Media*, p. 24.

[32] Wrong, "How Facebook groups bring people closer together".

[33] Anti-Defamation League, "Hate in social VR".

[34] UNESCO, *Youth and Violent Extremism on Social Media*.

2017 Charlottesville white supremacist event.[35] Until a year ago, that chat platform had been very popular among neo-Nazis and white supremacists, who shared a plethora of Hitler memes, white nationalist revisionist history and computer game strategy.[36] After the Charlottesville white supremacist event, which resulted in the killing of one anti-fascist protester, the platform took action in banning several of the largest alt-right Discord communities, thus depriving them of one of their main tools for communication and organization.

18. Neo-Nazi and other groups have also used digital platforms to raise funding for their activities. Most mainstream fundraising platforms, which allow people to fund a variety of projects and raise money online, have policies and codes of conduct that prohibit campaigns that promote racist hate speech and violent acts.[37] Using those policies, several online fundraising companies have prevented extremist affiliated groups from acting on their platforms. A recent development, however, has been the increased use by neo-Nazi supporters of online-only cryptocurrency to support their movements and actions.[38] Early in 2018, the Southern Poverty Law Center released a list of 200 Bitcoin accounts closely linked to white supremacist leaders and organizations. The organization explained that the decentralized, peer-to-peer, cryptocurrency appealed to hate group leaders and other influential extremists, and that no company or government could intervene to stop the donations from flowing.[39]

III. Applicable racial equality framework

A. International law

19. The International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights impose strong limitations on the propagation of racist and xenophobic expression and outlaw advocacy of national, racial or religious prejudice that amounts to incitement to discrimination, hostility or violence. In its general recommendation No. 35 (2013) on combating racist hate speech, the Committee on the Elimination of Racial Discrimination elaborated on how States parties should approach the regulation of racist speech under the Convention, and highlighted a number of factors that should inform the practice of Member States. Significantly, the Committee recalled that racial equality and freedom of expression were symbiotic and should not be pitted against each other in a competitive or zero-sum manner. Instead, the rights to equality and freedom from discrimination, and the right to freedom of expression, should be fully reflected in law and policy and practice as mutually supportive human rights.[40]

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[35] K. Roose, "This was the alt-right's favorite chat app. Then came Charlottesville", *New York Times*, 15 August 2017, available at www.nytimes.com/2017/08/15/technology/discord-chat-app-alt-right.html.

[36] Joseph Bernstein, "A thriving chat startup braces for the alt-right", Buzzfeed News, 23 January 2017, available at www.buzzfeednews.com/article/josephbernstein/discord-chat-startup-braces-for-the-alt-right.

[37] S. Dang, "Charlottesville: crowdfunding sites refuse to host campaigns raising money for neo-Nazi murder suspect", *The Independent*, 15 August 2017. Available at www.independent.co.uk/news/world/americas/charlottesville-latest-james-alex-field-crowdfunding-white-nationalists-kkk-neo-nazis-gofundme-a7893891.html.

[38] Southern Poverty Law Center, "In place of traditional fundraising sources, bitcoin fills a gap for hate groups", 27 December 2017. Available at https://www.splcenter.org/hatewatch/2017/12/27/place-traditional-fundraising-sources-bitcoin-fills-gap-hate-groups.

[39] Southern Poverty Law Center, "Bitcoin and the alt-right". Available at https://www.splcenter.org/bitcoin-and-alt-right.

[40] Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech, para. 45.

The Special Rapporteur would like to reaffirm the position of several United Nations human rights mechanisms, her predecessor and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, that those obligations also apply online.[41]

20. Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination requires State parties to condemn all propaganda and all organizations based on ideas or theories of superiority based on race, national origin, colour or ethnicity, or that attempt to justify or promote racial hatred and discrimination in any form. It also requires States parties to undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to make the dissemination of ideas based on racial superiority or hatred or incitement to, or acts of, such discrimination punishable by law. The Committee has recommended concrete guidance to States parties on the adoption of legislation to combat racist speech, in accordance with article 4, and the Special Rapporteur encourages States to review its general recommendation No. 35 in order to benefit from its concrete guidance.

21. Article 19 of the International Covenant on Civil and Political Rights protects freedom of opinion and expression, which may only be restricted by law and when such restrictions are necessary for protection of the rights or reputations of others and of national security and public order. Any restriction on freedom of speech must not only be a matter of necessity but must also be proportionately tailored to achieve the legitimate end that warrants the restriction.[42] Article 20 of the Covenant states that States parties must legally prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Human Rights Committee and a number of human rights mechanisms have interpreted that provision as requiring a high threshold because the limitation of speech must remain exceptional.

22. Freedom of expression is also enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination has reiterated that freedom of expression is integrated into the Convention and that it contributes to a fuller understanding of the parameters of freedom expression under international human rights law. When determining what forms of racist expression should be punishable by law, the Committee stresses the importance of context, which includes: (a) the content and form of speech; (b) the economic, social and political climate; (c) the speaker's status and position; (d) the reach of the speech; and (e) the objectives of the speech. States parties must take urgent action to ensure that racist expression that violates the standards set out in the Convention are made punishable by law. As stated by the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, States are also required to criminalize and prohibit exceptional types of action and expression online, encompassing direct and public incitement to genocide and incitement to national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (see A/66/290, paras. 25 and 28). Furthermore, The Committee has recommended that the criminalization of racist expression only be reserved for serious cases, to be proved beyond reasonable doubt and governed by principles of legality, proportionality and necessity,[43] and that less serious cases be dealt with using non-criminal sanctions. The Convention requires States parties to declare illegal and prohibited racist organizations that

[41] Committee on the Elimination of Racial Discrimination, general recommendation No. 35; A/HRC/26/49; A/67/326; A/HRC/38/35 and A/67/357.

[42] See *Velichkin v. Belarus* (CCPR/C/85/D/1022/2001), Views adopted on 20 October 2005.

[43] See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, paras. 22–25 and 33–35.

promote and incite racial discrimination, meaning they must take action to prohibit racist organizations, in accordance with article 4 (b), including in contexts where such organizations use nationalist populist fervour to attempt to mainstream their extreme ideologies or racial, ethnic or religious hatred and intolerance. Under the Convention, legislation to combat racist expression is not sufficient. Article 6 makes clear that effective protection from and remedies for racial discrimination are just as important as formal provisions.

23. Unfortunately, Member States sometimes use pretextual concerns about racist or intolerant speech in order to illegitimately quash expression. In that regard, the Committee has observed with concern that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention. The Special Rapporteur endorses the Committee's strong position that measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of the protest at injustice, social discontent or opposition.[44] Overbroad defamation and slander laws that target minority religious groups, political opponents, academics, human rights defenders or others who exercise their freedom of expression appropriately should not be tolerated, even online. The Special Rapporteur strongly condemns attempts by public and private actors to co-opt the language of equality and non-discrimination as a means of stifling legitimate expression. Similarly, the Special Rapporteur also condemns attempts by public and private actors to use the language of freedom of expression as a means or cover for violating the rights of others to equality and non-discrimination.

24. The Committee highlights that, although article 4 has operated as the principle vehicle for racist speech prohibition, the International Convention on the Elimination of All Forms of Racial Discrimination contains other provisions essential for fulfilling the objectives articulated in article 4. Article 4 expressly invokes article 5, which guarantees the right to equality before the law and the right to be free from racial discrimination in the enjoyment of human rights, including freedom of expression. Article 6 requires effective remedies for violations of the rights enshrined in the Convention as previously mentioned, and article 7 underscores the importance of education in promoting equality and tolerance.

25. The Durban Declaration and Programme of Action condemns the persistence and resurgence of neo-Nazism, neo-fascism and violent nationalist ideologies based on racial or national prejudice. It further condemns political platforms and organizations that promote doctrines of racial superiority and related discrimination, as well as legislation and practices based on racism, racial discrimination, xenophobia and related intolerance, highlighting that they are incompatible with democracy and transparent and accountable governance. It further reaffirms in its paragraph 94 that the stigmatization of people of different origins by acts or omissions of public authorities, institutions, the media, political parties or national or local organizations is not only an act of racial discrimination but can also incite the recurrence of such acts, thereby resulting in the creation of a vicious circle that reinforces racist attitudes and prejudices.

26. In the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, the Office of the United Nations High Commissioner for Human Rights (OHCHR) also suggests a high threshold for restrictions on freedom of expression. It outlines a six-part threshold test in keeping with the approach of the Committee, taking into account the context, speaker, intent and content, as well as the likelihood to cause harm and the extent of that harm. The consultative process of the Rabat Plan aimed at enhancing the understanding of the relationship between freedom of expression and incitement

[44] Committee on the Elimination of Racial Discrimination, general recommendation No. 35, para. 20.

to hatred. In a report, OHCHR expressed concerns regarding how Member States often refrained from punishing perpetrators of incidents in violation of article 20 of the Covenant, and at the same time oversaw the de facto persecution of minorities through the abuse of vague domestic legislation, jurisprudence and policies on speech. It also found that anti-incitement laws in countries worldwide were at times excessively narrow or vague (see A/HRC/22/17/Add.4, appendix, para. 11). The Rabat Plan of Action recommends that domestic legal frameworks on incitement to hatred expressly reference article 20 (2) of the Covenant and include robust definitions[45] of key terms, such as hatred, discrimination, violence and hostility, as defined by the Camden Principles on Freedom of Expression and Equality.[46]

B. Regional law

27. The African Charter on Human and Peoples' Rights enshrines equality and the right to non-discrimination (arts. 2, 19 and 28 among others), and guarantees the right to freedom of expression (art. 9). Although the Charter makes no explicit reference to incitement to racial hatred or violence, the African Commission on Human and Peoples' Rights condemned the use of hate speech on the Internet such as any form of speech that degrades others, promotes hatred and encourages violence against a group on the basis of criteria, including race, colour, religion, national origin, gender, disability or a number of other traits.[47]

28. Racial hatred, xenophobia and hate speech are contrary to fundamental human rights as guaranteed under the American Convention on Human Rights (arts. 1 and 13 (5)). It enshrines freedom of expression (art. 13), and States that any propaganda for war and any advocacy of national, racial or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds, including those of race, colour, religion, language, or national origin, shall be considered offenses punishable by law. Furthermore, the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, along with the former Special Rapporteur on the rights to freedom of opinion and of expression and other experts, have declared that expression that incites or promotes racial hatred, discrimination, violence and intolerance is harmful and that crimes against humanity are often accompanied or preceded by these forms of expression.[48]

29. The Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights) prohibits discrimination, including on the grounds of race, colour and religion, and ensures the enjoyment of the rights and freedoms without discrimination (arts. 1 and 14). While protecting the right to freedom of expression, the European Convention does not specifically mention safeguards against hate speech. However, the European Court of Human Rights has in extensive jurisprudence ruled on matters regarding hate speech and the

[45] See also A/67/357, paras. 44–46.

[46] See www.article19.org/resources/camden-principles-freedom-expression-equality/. See also E/CN.4/1996/39, annex; and A/67/357, paras. 39–45.

[47] African Commission on Human and Peoples' Rights, resolution on the right to freedom of information and expression on the Internet in Africa (ACHPR/Res.362(LIX) 2016).

[48] See E/CN.4/2002/75, annex VI. See also Igicio Gagliardone et al., "Countering online hate speech", UNESCO Series on Internet Freedom (Paris, 2015), p. 24. Available at www.nohate.es/media/uploads/countering_online_hate_speech_.pdf.

glorification of Nazism, including in the digital space.[49] In *Lehideux and Isorni v. France*, it opined that the denial or revision of clearly established historical facts, such as the Holocaust, would not fall under the protection of the right to freedom of expression under the European Convention.[50]

30. European Union law defines illegal hate speech as "the public incitement to violence or hatred directed to groups or individuals on the basis of certain characteristics, including race, colour, religion, descent and national or ethnic origin".[51] The Council of Europe has adopted the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, which prohibits racist and xenophobic material online.[52] The Protocol outlaws the denial, gross minimization, approval or justification of genocide or crime against humanity. The drafters of the Additional Protocol later explained that the expression of such ideas insults the memory of those persons who have been victims of such evil, as well as their relatives. Finally, it threatens the dignity of the human community.[53] The drafters have also explained that this provision is intended to cover the Holocaust and other genocides and crimes against humanity since 1945.[54]

31. In 2000, the European Commission against Racism and Intolerance passed its general policy recommendation No. 6 on combating the dissemination of racist, xenophobic and anti-Semitic material over the Internet, by which it requested States in particular to include the issue of combating racism, xenophobia and antisemitism in all current and future work at the international level, aimed at the suppression of illegal content on the Internet, and to support the self-regulatory measures taken by the Internet industry to combat racism, xenophobia and antisemitism on the Internet, such as anti-racist hotlines, codes of conduct and filtering software, and encourage further research in that area.[55] In its general policy recommendation No. 15 on combating hate speech (2015), Commission members recalled that all regulatory action must be consistent with the right to freedom of expression,[56] and that the

[49] European Court of Human Rights, jurisprudence on hate speech online and negationism/revisionism. *Case of Delfi AS v. Estonia*, application No. 64569/09, Judgment of 16 June 2015; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (2016); *Pihl v. Sweden* (2017); *Smajić v. Bosnia and Herzegovina* (2018); *Nix v. Germany* (2018); *Garaudy v. France* (2003); *Honsik v. Austria* (1995); *Marais v. France* (1996); *M'Bala v. France* (2015); European Court of Human Rights, "Hate speech", factsheet, June 2018. Available at https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.

[50] European Court of Human Rights, *Case of Lehideux and Isorni v. France*, No. 55/1997/839/1045, Judgment of 23 September 1998. Available at http://hudoc.echr.coe.int/eng?i=001-58245.

[51] Framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l33178&from=EN.

[52] Council of Europe Convention on Cybercrime and the Additional Protocol thereto, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, arts. 1 and 2. Available at https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/0900001680081601.

[53] Explanatory report to the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d37ae.

[54] Ibid., para. 40.

[55] European Commission against Racism and Intolerance, general policy recommendation No. 6 on combating the dissemination of racist, xenophobic and anti-Semitic material via the Internet (adopted on 15 December 2000), available at www.coe.int/web/european-commission-against-racism-and-intolerance/recommendation-no.6.

[56] European Commission against Racism and Intolerance, general recommendation policy No. 15 on hate speech (2015), para. 133.

placing of greater reliance on self-regulation to tackle the use of hate speech will in many instances be not only more effective but also more appropriate.[57]

IV. Good practices for countering neo-Nazism and other related intolerance online

A. Member State practice

32. Many States worldwide have taken legal actions against the promotion of Nazism and related ideology, from criminalizing Holocaust denial, banning neo-Nazi messages and imposing a ban on racist hate speech, to the prohibition of Nazi symbols, including images, books and materials.[58] At least one country proposed a bill that required social media platforms to remove within 24 hours content that violated national hate speech legislation, including neo-Nazi-related content.[59] In addition to restrictive laws, some States have created or requested governmental authorities in charge of dealing with telecommunications to deal with cases of online hate speech.[60] Some countries have also adopted policies and plans, including initiatives to tackle racist hate speech online.[61] By early in 2018, about two thirds of the European Union member States had a national contact point responsible for online hate speech.[62] Such practices are good as long as States do not use hate speech regulation as a pretext for censorship and other abuses.

33. However, not all countries have the same level of expectations with regard to the criminalization of Holocaust denial or the promotion of Nazism. In some countries, all Nazi-related messages, including Holocaust denial,[63] are strictly criminalized. In others, racist speech is protected on the grounds of freedom of speech and expression.[64] For example, in one State, racist hate speech, including online content sympathetic to neo-Nazi and related ideology, receives the highest level of protection related to the right to freedom of expression and opinion under its constitutional law and court jurisprudence.[65] This difference with respect to States' tolerance of online hate and the negative impact it can have creates regulatory problems and disparities in the treatment of xenophobic and racist material and

[57] Ibid., para. 130.

[58] Submissions received from Poland, Portugal, the Russian Federation, Spain and Ukraine.

[59] In January 2018, Germany began to enforce the *Netzwerkdurchsetzungsgesetz*, the first law of its kind in Europe. This new law requires social media platforms to remove within 24 hours most content that violates the strict anti-hate speech laws of Germany, or face fines of up to €50 million. Prohibited content includes pro-Nazi material. However, the law is still a work in progress. See also Anti-Defamation League, "Hate in Social VR".

[60] Submission received from Portugal and the Russian Federation.

[61] Submission received from Italy, the Russian Federation and Spain.

[62] European Commission, "Countering illegal hate speech online: commission initiative shows continued improvement, further platforms join", press release, 19 January 2018.

[63] Jacqueline Lechtholtz-Zey, "The laws banning Holocaust denial: revised from GPN issue 3", Genocide Prevention Now, No. 9, 2012. Available at http://www.ihgjlm.com/wp-content/uploads/2016/01/Laws-Banning-Holocaust_Denial.pdf.

[64] Flemming Rose, "The problem with hate speech laws in Europe", *El Pais*, 30 January 2017. Available at https://elpais.com/elpais/2017/01/30/inenglish/1485772786_432779.html; Reeta Pöyhtäri, "Limits of hate speech and freedom of speech on moderated news websites in Finland, Sweden, the Netherlands and the United Kingdom", *Annales*.

[65] The United States allows all forms of speech under the first amendment to its Constitution, except when hateful Internet communications incite imminent lawless action or constitute a true threat; see United States Supreme Court, *Reno v. ACLU* (1997). See also D. Hudson Jr. and Mahad Ghani, "Hate speech online", Freedom Forum Institute, 18 September 2017. Available at https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/internet-first-amendment/hate-speech-online/.

content disseminated by neo-Nazi groups, especially since many such groups operate transnationally. If a person resides in a jurisdiction that restricts racist speech online, he or she may avoid penalties by relying on an Internet service provider or hosting platform located in a country that tolerates such content.[66] This creates a double standard with regard to the liability of Internet and social media platform users.[67] Disparities among national legislations globally have had a considerable effect on the regulation of online content, the liability of people who upload racist content and the actions and responsibilities of technology companies.

34. Some States have tried to overcome the issue of jurisdictional safe havens for websites, forums or other platforms containing hate speech by blocking access to such content through regional human rights mechanisms or national tribunals.[68] Furthermore, in States where neo-Nazi or other racist hate content is prohibited, technology companies are required to comply with national legislation against Holocaust denial and any form of glorification of Nazism. In some European countries where such laws exist, users cannot gain access to neo-Nazi content,[69] such as YouTube videos, that they would be able to view in a neighbouring country without similar restrictions.[70] Although commendable, those strategies are usually expensive, show limited effectiveness and can have a detrimental impact on access to information and freedom of information if not properly designed and implemented.[71]

B. Good practices from technology companies

35. Early in the digital age, many States adopted rules to protect technology intermediaries, including Internet service providers, social media platforms and others, from liability for the content that third parties publicize on their platforms (see A/HRC/38/35, para. 13).[72] Over the past five years, many such technology companies have nonetheless made serious efforts to combat racist hate speech online,[73] including expressions of glorification of Nazism and neo-Nazism. Companies such as GoDaddy, Google and Airbnb have taken action to remove white nationalist and neo-Nazis content from their services.[74] Other platforms, like Twitter, Facebook and

[66] Alkiviadou, "Regulating Internet Hate".

[67] Morris Lipson, "Regulating hate speech content for the Internet: the legal jurisdiction puzzle", Organization for Security and Cooperation in Europe (OSCE), 2004. Available at https://www.osce.org/fom/36097?download=true.

[68] For example, Spain has allowed the judiciary to block Internet sites that do not comply with Spanish law. See also European Court of Human Rights, *Perrin v. United Kingdom* (No. 5446/03, ECHR 2005-XI). In Germany, the Federal Court held that all material uploaded to the Internet is answerable to German anti-hate legislation regardless of the country in which the material was created, with the only element posing any sort of significance being its accessibility to German Internet users. See also Alkiviadou, "Regulating Internet Hate".

[69] See LICRA v. Yahoo! (2000); Agnieszka Pikulicka-Wilczewska, "Nazi-inspired jewellery, trinkets wiped from auction site", *Al Jazeera*, 29 July 2018, available at www.aljazeera.com/indepth/features/nazi-inspired-jewellery-trinkets-wiped-auction-site-180728225153685.html; and Zuo, "YouTube's neo-Nazi music problem".

[70] Submission from YouTube.

[71] Sandy Starr, "Understanding hate speech", in *The Media Freedom Internet Cookbook*, Christian Möller and Arnaud Amouroux, eds. (Vienna, OSCE, 2004). Available at https://www.osce.org/fom/13846?download=true.

[72] Submission from Mozilla.

[73] Conor Cawley, "The tumultuous relationship between social media and hate speech", Tech.co, 4 January 2018. Available at https://tech.co/relationship-social-media-hate-speech-2018-01.

[74] Christine Hauser, "GoDaddy severs ties with Daily Stormer after Charlottesville article", *New York Times*, 14 August 2017, available at www.nytimes.com/2017/08/14/us/godaddy-daily-stormer-white-supremacists.html?_r=0.

YouTube, have in the past year banned individual users who have threatened violence or contributed to hate movements.[75]

1. Codes of conduct and rules and ethics codes

36. Many companies have adopted and updated regularly codes of conduct or ethics, including provisions on online hate speech. All of the companies that submitted information for the present report had policies against online hate speech more or less encompassing the glorification of Nazism, neo-Nazism and related content.

37. For example, the Wikimedia Foundation, which hosts Wikipedia and several other projects, acknowledged the dangers of harmful content online. Its policy states that contributors should not use Wikipedia articles, usernames, forum pages or user pages as a means of promoting racist hate speech and/or neo-Nazism or related ideology principles.[76] Twitter has its own code of conduct and rules, including on hateful content and conduct,[77] and a media policy, in order to combat such conduct and content and to counter propaganda from violent extremist groups.[78] The Internet service provider Mozilla has projects around world, raises awareness, presents to lawmakers and builds tools and mechanisms to combat hate speech, including the spread of neo-Nazism and related ideology.[79] YouTube, via Google, has a hate speech policy and at the same time encourages free speech. Incitement to hatred and violence against a group of people on the basis of their race, ethnicity or religion is prohibited under its policies.[80] YouTube allows the criticism of a nation State "unless if the primary purpose of the content is to incite hatred against a group of people, solely based on their ethnicity, or if the content promotes violence based on [race, ethnic origin or religion]", which would therefore violate its policies.[81] In addition, Facebook has rules prohibiting hate speech on its platform as a means of preventing an "environment of intimidation and exclusion and ... real-world violence".[82] Facebook defines hate speech as a "direct attack on people" on the basis of race, ethnicity, national origin, religious affiliation, sexual orientation, gender, gender identity or serious disability or disease. Facebook defines an online "attack" as "violent or dehumanizing speech, statements of inferiority or calls for exclusion or segregation".[83]

2. Neo-Nazi-related content moderation

38. In order to comply with their policies and rules, technology companies have adopted several initiatives to combat racist hate speech, including that of neo-Nazis or other hate groups, on their platforms. On Wikipedia, articles must be backed by citations to reliable sources, which to a certain extent helps to diminish the spread of

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[75] A. Robertson, "YouTube bans neo-Nazi channel after criticism over hate speech rules", *The Verge*, 28 February 2018, available at www.theverge.com/2018/2/28/17062002/youtube-ban-atomwaffen-neo-nazi-channel-hate-speech-rules; Roose, "This Was the Alt-Right's Favorite Chat App"; M. Little and S. Hollister, "Reddit, Facebook ban neo-Nazi groups after Charlottesville attack", *Cnet*, 15 August 2017, available at www.cnet.com/news/reddit-facebook-bans-neo-nazi-groups-charlottesville-attack/.

[76] Submission of the Wikimedia Foundation.

[77] Submission of Twitter, Inc. See also https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy.

[78] Submission of Twitter, Inc.

[79] Submission of Mozilla. See also www.mozilla.org/en-US/about/manifesto/.

[80] YouTube policy on hate speech, available at https://support.google.com/youtube/answer/2801939?hl=en.

[81] Ibid.

[82] Facebook community standards, available at https://www.facebook.com/communitystandards/objectionable_content/.

[83] Ibid.

false, harmful ideologies across the platform.[84] Google and YouTube rely on users to identify content that may violate their policies.[85] If it receives a report of a potential policy violation, it reviews the content and takes action, including limiting access to content, the removal of content, denial of access to printing the content and the restriction or termination of user access to Google products. YouTube also has a blacklist function whereby it can reject key words and terms — for example, racist, sexist or homophobic expressions — in the comments to a user's video, if he or she does not wish to have them appear.[86] Both the uploader and the commenter can flag comments or content that potentially violate YouTube's policies. Comments might be reviewed for approval by the author of the channel or by a YouTube moderator.[87]

39. Although Facebook's policy regarding the removal of content remains quite general and vague,[88] it too has removed content that glorifies violence or celebrates the suffering or humiliation of others, on the grounds that such content creates an environment that discourages participation. Graphic content is permitted, with some limitations, to help people raise awareness of issues like human rights abuses or acts of terrorism. A warning label might be added to especially graphic or violent content so that it is not available to all audiences.

3. Private partnerships with States, regional mechanisms and civil society organizations

40. Several of the technology companies consulted for the present report emphasized their commitment to complying with domestic legislation. Several were also exploring cooperation partnerships with Member States as well as regional institutions on the regulation of online content. Some companies reported that they had made efforts to consult and collaborate with civil society organizations, especially about guidance on content regulation[89] and human rights training.[90]

41. For example, Mozilla collaborates closely with policymakers, including at the European Union level, and with other technology companies, including Facebook and Twitter. It advocates against filtering as a method of suppressing certain undesired web content, since that can be difficult to identify properly. It also cites the risk to users' freedom of expression where blanket recognition and automated technologies are used.[91]

42. In May 2016, Facebook, Microsoft, Twitter and YouTube made a commitment to combat the spread of hate content online in Europe by adopting a code of conduct that targeted the incitement to commit violence or generate hatred on the grounds of race, colour, religion, descent or national or ethnic origin. The code stressed the right to freedom of expression and the important role of civil society organizations in countering negative and harmful narratives, and committed technology companies to ensuring that their platforms did not offer opportunities for illegal online hate speech

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[84] Submission of the Wikimedia Foundation.

[85] Google user content and conduct policy, available at https://www.google.com/+/policy/content.html.

[86] Submission from YouTube. See also "YouTube fait évoluer son système de commentaires", *Le Monde*, 4 November 2016, available at https://www.lemonde.fr/pixels/article/2016/11/04/youtube-fait-evoluer-son-systeme-de-commentaires_5025220_4408996.html.

[87] Submission from YouTube.

[88] https://www.facebook.com/communitystandards/content_related_requests/.

[89] Google also collaborates with civil society organizations, including the Anti-Defamation League. Submission from Google.

[90] Submission from Twitter.

[91] Submission from Mozilla.

to spread virally.[92] Google+, Instagram, Snapchat and most recently Dailymotion have also announced that they would adopt the code of conduct,[93] under which technology companies have removed 70 per cent of the content flagged by civil society organizations and other relevant stakeholders as illegal hate speech.[94]

V. Conclusion and recommendations

43. The growing support for neo-Nazism and related ideology, especially through the use of new digital technologies, is of primary concern to the Special Rapporteur. The current international and regional human rights framework offers relevant principles that should be implemented effectively in law and in practice by States in order to tackle such forms of racism and intolerance online.

44. The Special Rapporteur would like to reaffirm the recommendations made in previous reports of the mandate holder, which remain timely and effective, on combating the glorification of Nazism and neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. She urges States to pursue their efforts and take immediate measures to combat such practices or any direct or indirect manifestation of neo-Nazism or related intolerant ideology, including in the digital space.

45. With respect to racist expression online, including from neo-Nazi or other hate groups, the Special Rapporteur urges Member States to implement the concrete recommendations that other United Nations bodies, especially the Committee on the Elimination of Racial Discrimination, have made pertaining to combating racist and xenophobic expression. General recommendation No. 35 of the Committee is vital in that regard, the practical guidance of which is not summarized here owing to space constraints.

46. In keeping with the Committee's guidance, the Special Rapporteur urges States parties to withdraw their reservations to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 20 of the International Covenant on Civil and Political Rights. She also reiterates paragraph 9 of general recommendation No. 35, which states that, as a minimum requirement, and without prejudice to further measures, comprehensive legislation against racial discrimination, including civil and administrative law as well as criminal law, is indispensable to combating racist hate speech effectively. Racial equality and freedom of expression are mutually reinforcing, even where online communication is concerned. The Rabat Plan of Action is another resource that can help those Member States that seek to develop a human rights-compliant approach to combating racist expression.

47. The establishment of laws and policies should include representatives of those communities most affected by neo-Nazi and other extremist groups (see A/67/326, para. 49; and A/HRC/26/49, paras. 55–63). While laws prohibiting racist hate speech and incitement to hatred and violence in compliance with international human rights law are essential, they should be defined in consultation with civil society organizations that work on the issue of racial

[92] Code of conduct on countering illegal hate speech online, available at https://ec.europa.eu/information_society/newsroom/image/document/2016-50/factsheet-code-conduct-8_40573.pdf.

[93] European Commission, "Countering illegal hate speech online: #NoPlace4Hate", 11 July 2018. Available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300.

[94] European Commission, "Countering illegal hate speech online: commission initiative shows continued improvement, further platforms join", press release, 19 January 2018. Available at http://europa.eu/rapid/press-release_IP-18-261_en.htm.

discrimination and the fight against neo-Nazi-related intolerance. Such organizations play a crucial role in reporting, monitoring and advocating against neo-Nazism and other extreme ideologies online. By creating maps and databases and reporting cases of neo-Nazi hatred or related activities, and by filing complaints to domestic and regional courts, civil society contributes to combating the spread of such extremist ideologies online (A/HRC/26/49, paras. 55–63).[95]

48. **Criminal and civil penalties alone will not put an end to racial and xenophobic intolerance online. Member States should invest more resources in building and sharing knowledge on successful positive measures that go beyond sanctioning violations once they have occurred.**

49. **Technology companies will continue to have a significant role in combating intolerance online, and Member States should work collaboratively with the private sector as a result.**

50. **Technology companies must invest the resources necessary to ensure that their codes of conduct and actual practices reflect a serious commitment to racial equality, and to an understanding of the right to freedom of expression that complies with international human rights law and principles.**

51. **Technology companies should thus commit to combating racist hate speech as defined in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, and as elaborated under the Rabat Plan of Action. They should also embrace the Guiding Principles on Business and Human Rights and the framework on content regulation recently suggested by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/38/35).**

[95] See also the "hate maps" generated by non-governmental organizations such as the Southern Poverty Law Center, the Anti-Defamation League, the Association for Progressive Communications, etc.

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University for Peace

University for Peace

Report of the Secretary-General

Summary

The University for Peace was established as an academic institution with both academic and financial autonomy by the International Agreement for the Establishment of the University for Peace, a multilateral treaty. The General Assembly, in its resolution 35/55, approved the establishment of the University for Peace in conformity with the International Agreement and with the charter of the University for Peace. The Agreement states that "the financing of the University shall not have any financial implications for the budget of the United Nations or that of the United Nations University. The budget of the University shall not impose any obligatory assessments on the States parties to the present Agreement unless they agree otherwise." The University has been training leaders for peace for the past 38 years, with more than 2,200 alumni — over 54 per cent of them women — from its master's degree programmes working for peace around the world. The University is an important educational institution in the field of irenology, set out in the pursuit of the mandate set forth in its charter, namely to "provide humanity with an international institution of higher education for peace and with the aim of promoting, among all human beings the spirit of understanding, tolerance and peaceful coexistence, to stimulate cooperation among peoples and to help lessen obstacles and threats to world peace and progress." The University's budget is covered primarily by its tuition fees and the generous contributions of private foundations and a select group of Governments.

As it prepares to celebrate its fortieth anniversary, the University continues its systematic and critical study, understanding and analysis of the causes of the multiple problems affecting human and global well-being; the exploration and formulation of strategies and practices in various contexts to help to address such problems and contribute to the processes of peacebuilding, including through the achievement of the Sustainable Development Goals; the cultivation of modes of thinking, inquiry and pedagogy that are critical, multidisciplinary, interdisciplinary, integrative, empowering and transformative; and the development of a diverse, inclusive, ethical,

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creative community of learning, sharing, networking and solidarity on campus and in the global environment. Through its diverse faculty body of resident and visiting professors, the University trains future leaders for peace to explore and formulate strategies and practices in various contexts to address such problems and contribute to processes of making, building and sustaining peace.

The University is currently implementing 14 joint academic programmes with high-level universities around the world. The various contributions of the University provide new generations with the knowledge and skills to influence processes of change in favour of peace, be it within the United Nations system, within States or as part of civil society organizations, all of which increasingly require specific knowledge on how to address the tensions, threats and conflicts in today's international system.

With its contribution to the work of the United Nations and its vision of the role of other key civil society actors, it is essential that the University's vision, position and tasks in the context of an evolving international system be reviewed regularly. The current international context demands an expansion of training and educating for peace, especially with regard to ongoing and increasingly complex conflicts, interrelations between actors at the local, national, regional and global levels and the impact of transnational crime on peace and security. The University contributes to such a response. In that regard, the support of Member States will be important in ensuring the successful execution of the University's mission, which is aimed at the academic training of future leaders of Governments, non-governmental organizations and the private sector on peaceful conflict resolution and the relationship between peace, security, development, human rights and environmental protection as the foundation for economic development and increased equality. With the support and collaboration of Member States and the wider United Nations system, the University will continue to contribute preparing a new generation for their fundamental role and responsibility in resolving conflicts — with an emphasis on prevention — and promoting opportunities for cooperation for peace.

I. Introduction

1. The present report, which is submitted to facilitate consideration by the General Assembly of the agenda item entitled "University for Peace", pursuant to Assembly resolution 70/79, contains a summary of the progress made by the University during the period 2015–2018 and highlights both its opportunities for growth and its challenges.

2. The present report includes an overview of the main activities at the University's campus in Costa Rica, as well as those carried out by its regional centres and affiliated institutions. It highlights the University's relationships with the United Nations and related bodies, as well as with the host country, in addition to relationships with Governments, international organizations, non-governmental organizations, civil society and the private sector. The report also includes information on the University's recent academic achievements, its current financial situation and governance mechanisms and its development strategy for the next three years.

3. In its resolution 70/79, the General Assembly recognized the important and varied activities carried out by the University during the period from 2012 to 2015, with the valuable assistance and contributions of Governments, foundations and non-governmental organizations; and recognized the relevance of Sustainable Development Goal 4, ensuring inclusive and equitable quality education and promote lifelong learning opportunities for all, particularly its target 4.B, which is aimed at substantially expanding the number of scholarships available to developing countries by 2020. The Assembly requested the University, given its role in developing new concepts and approaches to security through education, training and research in order to respond effectively to emerging threats to peace, to find viable ways to further strengthen cooperation with the United Nations system; it also requested Member States to take the lead in supporting the mission of the University by recognizing the institution and, when possible, making financial contributions that would make it possible for the University to offer its programmes of study to all students who wish to participate in them and by facilitating the University's operations in host countries; and invited Member States that had not already done so to accede to the International Agreement for the Establishment of the University for Peace.

II. University for Peace in 2018

A. Thirty-eight years of the University for Peace

4. Over the past 38 years, the University has been guided by the charter of the University and has sought to support the main objectives of the United Nations in matters of peace and international security through the training of new generations of professionals with the ability to transform and resolve conflict through understanding, tolerance and coexistence, on the basis of cooperation and the values of the United Nations.

5. The University contributes to the education and training of leaders in the field of peace and conflict resolution, in relation to the four basic pillars of the United Nations: peace and security, human rights, development and the rule of law. More than 2,200 alumni from over 100 countries have leveraged their training, experience and skills to make a positive impact on their communities, countries, regions and the world. The majority of our students and alumni are women, who play a historic and critical role as peacebuilders, at both the local and the international levels. It is also important to highlight the growing number of non-degree training (capacity-building activities) carried out by the University in partnership with United Nations system

agencies and other international organizations, such as the Women Scholarship for Peace programme (carried out in partnership with the Office for Disarmament Affairs). The University focuses on education for non-violence, education for inclusion, education for social cohesion, education for the rule of law, and education for legality and ethics. It is crucial to develop an educational curriculum that promotes skills, values and behaviours that contribute to peace, justice, sustainable development and solidarity.

6. The renewed vision must continue and further incorporate the gender and inclusivity perspectives that have characterized the University for Peace, as evidenced by its master's degree in gender and peacebuilding and its efforts to make gender a transversal topic throughout its academic programmes. The gender distribution of the University's alumni is 62 per cent female and 38 per cent male. The Asian Peacebuilders Scholarship programme, carried out with Ateneo de Manila University and with the support of the Nippon Foundation, has supported 56 per cent female students and 44 per cent male students. At the University's main campus, 55 per cent of resident faculty members are female.

B. Institutional changes

7. In June 2013, the Council of the University elected a new rector, Francisco Rojas Aravena, who has significant experience in the field of international relations and international security. At its most recent meeting, held in June 2018, the Council renewed the rector's mandate for an additional five years, until June 2023.

8. The Council is composed of 17 members, 10 of whom are appointed by the Secretary-General in consultation with the Director General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and 7 of whom are ex officio members established by the charter of the University for Peace. One position on the Council is currently vacant. Pending the appointment of the additional member, the Council currently comprises nine men and seven women.

9. The current ex officio members are: Francisco Rojas (Chile), rector; Oscar Fernández-Taranco (Argentina), representative of the Secretary-General; Pilar Álvarez-Laso (Mexico), representative of the UNESCO Director General; David Malone (Canada), United Nations University rector; Juan Carlos Mendoza and Pilar Garrido (Costa Rica), host country representatives; and Enrique Barón Crespo (Spain), chancellor.

10. The current members from the academic community or other persons eminent in the field of peace and security are: Hal Klepak (Canada), president; Fernando Blasco (Argentina), vice-president; Fatima Akilu (Nigeria); Jean Arnault (France); Alicia Bárcena (Mexico); Lalla Ben Barka (Mali); Ouided Bouchamaoui (Tunisia); Meenakshi Gopinath (India); and Xiaoyu Zhang (China).

C. Rodrigo Carazo campus, University for Peace headquarters

11. The University's Rodrigo Carazo campus, located in Costa Rica, is named after its founder, a former President of Costa Rica whose vision and passion for training future leaders for peace materialized with the creation of the University for Peace in 1980. It consists of 300 ha located within a secondary forest reserve, home to mammals such as monkeys and deer, over 300 species of birds and more than 100 species of trees. It is an example of the biodiversity of Costa Rica, the protection of which represents a great opportunity for the development of scientific studies on tropical biodiversity. The park is open to the general public.

D. Academic matters

1. Master's degree programmes

12. The University continues to offer innovative master's degree programmes in areas related to peace studies, international law, gender studies, the environment and sustainable development. Currently, eight master's degree programmes are offered at the main campus, and they all incorporate the themes of gender, race, religion, class and ethnic perspectives, as well as those related to the community of, inter alia, lesbian, gay, bisexual, transgender and intersex individuals. The programmes offered are:

(a) International peace studies;

(b) Gender and peacebuilding;

(c) Peace education;

(d) International law and human rights;

(e) International law and the settlement of disputes;

(f) Environment, development and peace, with specializations in environmental security and governance, sustainable natural resource management, climate change policy and sustainable food systems;

(g) Responsible management and sustainable economic development;

(h) Conflict resolution, peace and development (taught in Spanish).

13. The University also offers an online master's degree programme in sustainable peace in the contemporary world, which engages professionals and researchers in resolving pressing and complex global problems that concern humanity.

14. Over the past three years, as part of its strategy to expand its academic offerings, the influence of its programmes and its image, the University has created a series of off-campus master's degree programmes, including an executive master's degree in international human rights law, in association with the Costa Rica Bar Association; a master's degree in international human rights law, in association with the United Nations Development Programme (UNDP), the Swiss Agency for Development and Cooperation and the judicial branch of Honduras; a master's degree in prevention of asset laundering and financial delinquency, in association with a foundation that studies of asset laundering and related crimes; a master's degree (law) in transnational crime and justice, in association with the United Nations Interregional Crime and Justice Research Institute; and a master's degree in peace, governance and security, in association with the national police of Uganda.

2. Dual degree and joint programmes

15. The University maintains dual-degree and joint programmes with leading universities around the world. Those options enable students to earn multiple degrees in complementary areas by studying at multiple institutions. Currently, the University for Peace offers the following dual degree and joint programmes with partner universities around the world:

(a) American University, United States of America: a master's degree in international affairs from American University and a master's degree in natural resources and sustainable development from the University for Peace;

(b) Ateneo de Manila University, Philippines: a master's degree in global politics from Ateneo de Manila University and a master's degree of choice from the University for Peace;

(c) Brandeis University, United States: a master's degree in coexistence and conflict from Brandeis University and a master's degree in international law and human rights from the University for Peace;

(d) Hankuk University of Foreign Studies, Republic of Korea: a master's degree from each institution in the fields of law, communications (media) and sustainable development, depending on the student's area of interest;

(e) Innsbruck University, Austria: a master's degree in peace, development, security and international conflict transformation from Innsbruck University and a master's degree of choice from the University for Peace;

(f) International University of Monaco, Monaco: a master's degree in sustainable peace through sports at the International University of Monaco and the option to obtain a number of credits towards a master's degree at the University for Peace;

(g) Pontificia Universidad Javeriana, Colombia: a master's degree in human rights and culture of peace, taught in Spanish;

(h) IHE Delft Institute for Water Education, Netherlands, and Oregon State University, United States: a master's degree in water cooperation and peace from Oregon State University and a master's degree in water, development and peace, with a specialization in environmental security, from the University for Peace;

(i) The Hague University of Applied Sciences, Netherlands: a master's degree in responsible management for a sustainable world;

(j) Universidad Alfonso X El Sabio, Spain: a master's degree in international cooperation or human rights from Universidad Alfonso X El Sabio and a master's degree of choice from the University for Peace.

16. The University will continue, wherever possible, to develop similar programmes to expand its impact around the world with key postgraduate institutions and think tanks whose work supports the mission and values of the University for Peace and the United Nations.

17. The master's degrees in regional studies have allowed the University to better incorporate students from Spanish-speaking countries, in particular from its host country, and students wishing to pursue studies in the development field in Spanish-speaking countries.

3. Scholarship programmes

18. The University is currently the beneficiary of a number of scholarship programmes, including:

(a) The Asian Peacebuilders Scholarship programme: since 2007, the University has been working with Ateneo de Manila University on a capacity-building project for Asian professionals. This programme, sponsored by the Nippon Foundation of Japan, offers up to 30 annual scholarships for Asian professionals (15 from Japan and 15 from South-East Asia). In 2014, the University for Peace and Ateneo de Manila University gave the scholarship programme a dual-degree format. This enriched programme offers intensive, specialized language training to facilitate the participation of professionals with lower levels of English proficiency, as well as the hands-on design and implementation of an intensive field project in Asia;

(b) Hankuk University of Foreign Studies: this combined programme is offered by the University for Peace and Hankuk University of Foreign Studies, specifically the Graduate School of International and Area Studies;

(c) The Costa Rica Bar Association: as part of the academic partnership with the University for Peace, the Costa Rica Bar Association assigns 10 scholarships to students pursuing the off-campus degree in international law and human rights;

(d) The German Academic Exchange Service: since March 2018, University for Peace has been part of a group of higher education institutions in Central America and the Dominican Republic affiliated with the German Academic Exchange Service. The in-region scholarship programme grants scholarships for development-related master or doctoral studies for individuals who plan to pursue a career in teaching and/or research at a higher education institution in their home region or in their home country. The number of scholarships is determined on a yearly basis;

(e) Rotary International: in 2018, Rotary International designated 6 scholarships for students wanting to pursue their master's degree in water cooperation and diplomacy at the University for Peace, carried out jointly with Oregon State University and the IHE Delft Institute for Water Education.

19. Furthermore, the University offers a series of scholarships in accordance with the following categories: one full scholarship per year to a resident of Ciudad Colón, awarded in consultation with the Mora Municipality; 50 per cent tuition for professors from a partner university; 50 per cent tuition for Costa Rican citizens and legal residents; 50 per cent tuition for current full-time United Nations staff members and volunteers; 50 per cent tuition for documented refugees and asylees; 50 per cent tuition for alumni interested in pursuing a second degree at the University for Peace; 30–50 per cent merit-based scholarship (discretionary); 30 per cent tuition scholarship for citizens and nationals of a signatory State to the charter of the University for Peace; 30 per cent scholarship to students who have received an undergraduate or graduate degree from a partner university; 30 per cent scholarship for students from Spanish-speaking countries interested in the master's degree in conflict resolution, peace and development (taught in Spanish).

4. Doctoral programme

20. The University offers a doctoral programme in peace and conflict studies designed for talented researchers who will pursue innovative research in the field of peace studies. In addition, practitioners can transform their experiences into scientific knowledge that can be systematized and disseminated through academic publications. The themes on which doctoral candidates focus on correspond to the most significant current debates at the United Nations and in the international arena.

21. The University is currently working on increasing the impact of its doctoral programme through the design of regional programmes to support different constituencies. In Africa, the University is currently working alongside the following institutions: University of Cape Town, South Africa; University of Yaoundé II, Cameroon; Nkumba University, Uganda; Addis Ababa University, Ethiopia; University of Ghana; University of Kisangani, Democratic Republic of the Congo; University of Nairobi, Kenya; and University of Witwatersrand, South Africa, as well as the International Development Research Centre in Canada. For the 2018–2019 academic year, the University will open admissions for the second cohort of the doctoral programme for the Africa region. Furthermore, the University is working with Universidad Alfonso X in Spain to launch a doctoral programme within the rules of the European academic space. The programme will be launched following the approval of the accreditation body in Spain. In China, the University is working with its partners to launch a doctoral programme focused on the most important topics on the regional agenda.

5. Other academic activities

22. The University has successfully carried out a number of capacity-building programmes over the past 10 years. They range from diploma and certification courses to full-scale master's degree programmes, all tailor-made to meet the needs of donors and partners.

23. In November 2016, the University for Peace held a one-week workshop for teachers from Central America and the Dominican Republic on science, technology, engineering, arts and math training. The TeachHer initiative is a pilot project launched in June 2016 by the former Director General of UNESCO, Irina Bukova, the wife of the former Vice-President of the United States, Jill Biden, and the former First Lady of Costa Rica, Mercedes Peñas Domingo. The TeachHer global public-private partnership works with target Member States, UNESCO regional field offices and institutes and non-governmental organization leaders in science, technology, engineering, arts and math training to implement and promote programmes that will support girls' education in those areas. The focus is on developing a cadre of gender-sensitive teachers who will noticeably increase the number of adolescent girls interested in pursuing careers in science, technology, engineering, arts and math, along with ongoing professional development and networking for teachers.

24. In 2017, the University for Peace concluded a three-year project with the Office for Disarmament Affairs, which provided scholarships and training for 140 women on disarmament and non-proliferation activities, with a clear focus on peace and conflict. The project consisted of four different training sessions in Addis Ababa, Cairo, Bangkok and San José. In January 2018, the University for Peace began a second project with the Office and the Organization for Security and Cooperation in Europe (OSCE), the OSCE Scholarship for Peace. This initiative, conducted in partnership with 28 organizations whose work contributes to disarmament, non-proliferation and development-related issues, offers training programmes providing foundational skills and knowledge on conflict prevention and resolution through arms control, disarmament and non-proliferation with a specific focus on OSCE-relevant instruments, for 70 young professional women and men from participating OSCE States and partners.

25. The University is currently concluding its master's degree programme in Honduras, in which 100 judges, prosecutors and public defenders were trained at the postgraduate level. Upon completion of the programme, graduates receive a master's degree in international law and human rights. The programme is being executed in association with the Swiss Agency for Development and Cooperation and in coordination with UNDP.

26. The University signed a cooperation agreement with the regional government of Extremadura, Spain, to organize a summer course in July 2018 in areas related to conflict resolution, peace, gender and development, with key figures from the European Union, UNESCO and the University for Peace set to participate.

27. To continue the work completed during the first phase of the project on regional international law and access to justice in Latin America, the University for Peace is organizing activities to commemorate the 40-year anniversary of the Inter-American Court of Human Rights, in association with the German Cooperation Agency. Activities include a seminar on international law and access to justice and a workshop on human rights and sustainable development. This activity aims to further build a platform for dialogue and discussion in order to establish a conceptual framework regarding access to justice in Latin America.

6. Accreditation

28. Since 2005, the University has implemented a continuous and systematic external evaluation of all its master's degree programmes. External evaluators assess the academic quality and performance of each programme and provide recommendations for its improvement.

29. The University became a part of the National System of Higher Education Accreditation in Costa Rica in 2008 and immediately proceeded to begin the accreditation of its Department of Environment and Development programmes, which were accredited in 2014. In 2016, the programmes within the Department of International Law followed suit and received their accreditation. The Department of Peace and Conflict Studies programmes are in the process of being accredited.

7. Enrolment

30. As is the case with many educational institutions, full-time enrolment at the University's main campus has suffered in recent years. The number of applications has remained stable over time, but many students cannot afford to pursue their graduate studies without financial support in the form of financial aid or scholarships. Such support from Governments, foundations and the private sector has become essential to guarantee access to the programmes. Currently, many applicants do not pursue their acceptance when they learn that the University cannot offer substantial scholarship assistance.

31. In accordance with the guidelines established by the Council of the University and its medium-term and long-term strategic plans, the University is working towards enrolling 500 students a year by 2020 in its various academic programmes, both on campus and through its off-campus programmes; for the 2017–2018 academic year, this number reached 400. In order to achieve this target, the University is currently seeking to establish several international scholarship funds with the support of the signatory States to the charter and international philanthropic institutions.

8. University alumni

32. The University's more than 2,200 alumni live and work in every region of the world. The vast majority work in a peacebuilding capacity in their home countries and internationally, often on the front line of conflict situations. Currently, the highest percentage of alumni work for non-governmental organizations, but many graduates go on to work within the United Nations system and in various international humanitarian capacities. Some now teach at the university level and work for academic institutions, while others have joined their national Governments in diverse and influential fields, including international affairs, electoral tribunals and environmental policy. Another significant portion of the alumni community is pursuing doctoral degrees.

33. Given the importance of its alumni network, the University is working to build contacts with as many alumni as possible through its alumni relations officer. The main tasks of the alumni relations programme are to focus on planning and implementing programmes that keep alumni connected with each other and with the University, to encourage and promote alumni's professional development and to keep the alumni community aware of the University's developments and needs, thus allowing them to support its medium-term and long-term strategies.

9. Publications

34. The University is constantly promoting the generation of knowledge on behalf of its academic faculty, as well as the dissemination of knowledge through

publications. Both through its in-house publication *Ideas for Peace* and through the publication of books and other academic materials in collaboration with other institutions, the University for Peace strives to contribute to the global discussion on peace and conflict, international law, climate change and other topics directly related to its areas of expertise.

35. During the 2015–2018 period, the University has increased its academic production, including the number of publications. Over the past two years, University faculty members have published five books[1] and several articles and book chapters (6 thus far in 2018, 18 in 2017 and over 12 in 2016).

36. In collaboration with the Peace Without Borders foundation and Abat Oliba CEU University in Spain, the University for Peace published three volumes related to the right to peace, namely, "The Right to Peace: Past, Present and Future", by Christian Guillermet Fernández, David Fernández Puyana and Miguel Bosé, and "History of Peace in the West", by Miguel Bosé and David Fernandez-Puyána, in both English and Spanish.

37. In collaboration with the German Cooperation Agency, the University plans to publish books on access to justice from an international perspective in Latin America and on bar associations and access to justice in Latin America, and an analysis of legal studies in Costa Rican universities.

E. Subsidiary centres and affiliated institutions

1. Changes to regional offices

38. Since the previous report was submitted to the General Assembly, the University for Peace has expanded its global reach with a series of changes to its regional offices meant to increase the University's visibility and impact.

39. In 2018, the University for Peace began formal, and ultimately successful, consultations in Geneva to re-establish its office there, located at the headquarters of the Building Foundation for International Organizations. The work carried out by the office will represent an important contribution of the University for Peace at the second-largest United Nations headquarters.

40. In 2017, the University for Peace Centre in The Hague came under new leadership. The Centre's focus is currently on peace and conflict studies, water and peace (water diplomacy) and urban peace and security. The Centre works with various Dutch and other European partners, as well as experts from the University's global network, to achieve its objectives. A specific task is to promote and facilitate the recruitment of European students to master's degree programmes and other educational activities at the University's main campus in Costa Rica. Another task is to facilitate the implementation of the activities of the Earth Charter International in the Netherlands in cooperation with three partner organizations. The Centre is an independent entity under Dutch law and is financially independent from the University.

41. The University continues to have permanent observers and representatives at United Nations Headquarters in New York and in Bonn, Germany. The University has also been negotiating with the Government of Honduras to establish a representation

[1] Books published by faculty members during this period include: Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages* (Routledge, 2017). Mariateresa Garrido (ed.), *Human Rights and Technology: The 2030 Agenda for Sustainable Development* (University for Peace, 2015). Gudmundur Eiriksson, *Liber Amicorum: In Honour of a Modern Renaissance Man* (O. P. Jindal Global University, 2017).

office in Tegucigalpa. The agreement is under consideration by the National Congress of Honduras.

42. The Africa programme was established in 2002 with the objective of building the capacity of African universities in the areas of peace, gender, conflict, governance, security and development. The programme's undertakings are built around two major pillars: strengthening the teaching, training and learning capacity of African tertiary education institutions and enhancing research and publications by African scholars. The Africa programme is managed by the University's regional office in Addis Ababa, which is financially autonomous.

2. Affiliated institutions

Earth Charter

43. The Earth Charter Centre for Education for Sustainable Development implements actions in two main areas: training and research on education for sustainable development for educators and youth empowerment, which correspond to the implementation of the commitments made to the UNESCO Global Action Programme on Education for Sustainable Development. The Earth Charter seeks to inspire a new sense of global interdependence and shared responsibility for the well-being of the whole human family, the greater community of life and future generations. It is a vision of hope and a call to action.

Human Rights Centre

44. The Human Rights Centre was created in line with the stated mission of the University, as specified in its charter, to promote understanding of, respect for and enjoyment of human rights. The Centre carries out its mission through specialized human rights education, training, capacity-building and awareness-raising activities, and takes a practitioner-based approach to the respect, protection and fulfilment of human rights, while promoting the integration of theory and practice. The Centre has also taken a leading role in promoting the right to development. In particular, the Centre is the lead partner of a joint e-learning project on operationalizing the right to development in the implementation of the Sustainable Development Goals, developed and delivered in association with the Office of the United Nations High Commissioner for Human Rights and the United Nations University International Institute for Global Health.

Centre for Executive Education

45. Located within the University for Peace, the Centre for Executive Education was created in 2007 to offer a platform for engaging with the University and its mission, without students undertaking a degree-bearing programme. Over the past decade, the Centre has worked with leaders from around the world to offer transformational educational experiences that are dynamic and engaging while inspiring participants to have a positive influence in an increasingly interconnected world. The Centre engages through three main programmes: online courses with a capstone diploma in social innovation, customized on-site university group programmes and on-site workshops at the University.

F. Local relations

46. Relations with the host country remained strong during the 2015–2018 period. The new President, Carlos Alvarado, assumed office in May 2018. Almost immediately after assuming office, the Vice-President and Minister for Foreign Affairs, Epsy Campbell, met with the University's rector, Francisco Rojas, to assure

continued support by the host country to the mission of the University. Following that meeting, President Alvarado named two high-ranking ministers to the University Council as host country representatives.

G. International relations

47. The University has relied on its Asian Peacebuilders Scholarship programme, sponsored by the Nippon Foundation, for the majority of its presence in Asia. Over the past three years, University leadership has expanded its presence in the Asian region. In 2017 and 2018, the rector travelled to China, India, Japan, the Philippines, the Republic of Korea and Thailand for a series of events in celebration of the tenth anniversary of the programme.

48. During that period, the University also signed a memorandum of understanding with the China International Council for the Promotion of Multilateral Corporations. Through the partnership, the University will establish a University Centre in China, as well as developing a series of academic programmes for Chinese students, including master's and doctoral degrees.

49. Furthermore, the University is currently in negotiations with the China Scholarship Council to secure a permanent number of scholarships for students from China wishing to pursue their graduate studies at the University's campus in Costa Rica.

50. Within the context of the swearing-in ceremony for the new President of Costa Rica, two important delegations visited the university campus, the Special Representative of Japan, Shunsuke Takei, and the Ambassador of Nepal to the United States and designated Ambassador to Costa Rica, Arjun Karki, with whom the University explored possible scholarship funds for students from Nepal.

51. In April 2016, the University signed a memorandum of understanding with the national police of Uganda to support the newly created Graduate College for a period of five years. The project is valued at approximately $1 million, which is financed directly by the national police. The funding provided is expected to keep the Africa programme running, as well as providing the time needed to continue fundraising efforts in the region before the conclusion of the five-year period of this project.

52. In the Americas, the University signed memorandums of understanding with both the Inter-American Institute for Cooperation on Agriculture and the Latin American Faculty of Social Sciences.

H. Relations with the United Nations system

53. The University is continually seeking partnerships, visiting scholars and collaborative activities with relevant United Nations bodies.

54. During the 2015–2018 period, the University for Peace participated in meetings of the General Assembly, including the High-level Forum on the culture of peace in and the high-level meeting on "Peacebuilding and sustaining peace", convened by the President of the Assembly in April 2018. During those events, the University had the honour and privilege of addressing the Assembly and pledging its commitment to supporting the work of the United Nations.

55. On 14 June 2018, the rector of the University for Peace participated as keynote speaker in a half-day intersessional workshop on the right to peace in Geneva, held pursuant to Human Rights Council resolution 35/4 on promotion of the right to peace.

56. While at United Nations Headquarters for the high-level meeting on "Peacebuilding and sustaining peace", representatives of the University held a side event on the role of education in peacebuilding and sustaining peace. The event focused on the University's Asian Peacebuilders Scholarship programme as an example of a successful academic programme for engaging in peacebuilding in a meaningful way.

57. The visit to New York also allowed the University representatives to sign a memorandum of understanding with the United Nations Institute for Training and Research to create academic programmes of mutual interest. Furthermore, both institutions will promote the exchange of qualified students and the exchange of faculty for joint research and teaching, and will foster academic areas of mutual interest.

58. In September 2016, the University for Peace began the implementation of a new programme in partnership with the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration and the Government of Costa Rica, with the aim of offering quality temporary reception conditions for the implementation of the protection transfer arrangement, for the subsequent resettlement in a third country of families of the North Triangle of Central America, for a period of three to seven months. The University for Peace is the implementation agency for the programme, for which it has developed and strengthened more than 20 protocols, and incorporated changes to its administrative system in order to facilitate the assistance provided to forcibly displaced persons. Those efforts culminated in the University for Peace receiving the "Living Integration" seal on 23 April 2018, as a recognition of its accomplishments in this area.

59. In April 2018, the University joined the Global Delivery Initiative, a partnership of some 40 institutions and organizations, coordinated by the World Bank, to generate and share knowledge and best practices and lessons learned towards improving the delivery of development programmes.

60. The University is also in discussions with the United Nations System Staff College to co-organize a "sustainable development academy", a high-level multi-stakeholder dialogue and training initiative focused on the 2030 Agenda for Sustainable Development. That initiative aims to gather senior staff from the United Nations system, senior government officials, business leaders and leaders of civil society organizations and academia from the Americas region to engage in collective learning and discussion of the 2030 Agenda, as well as to build collective efforts towards advancing the Sustainable Development Goals. The University hopes to contribute content that will help guide these efforts towards conflict prevention in keeping with a "sustaining peace" approach.

61. During the period under review, the University also signed a memorandum of understanding with the United Nations Interregional Crime and Justice Research Institute for collaboration in the University's master's degree in transnational crime and justice in Turin, Italy. The first cohort has successfully completed the programme and the second is starting soon.

62. Finally, the United Nations sabbatical leave programme will give priority to applicants who propose to study at the University for Peace.

I. Community relations

63. The relationship between the University and the local communities of El Rodeo and Ciudad Colón is excellent. University authorities, faculty and students regularly participate in and contribute to the towns' cultural activities. University students

conduct community work throughout the towns, and municipal authorities contribute actively to the University by keeping its authorities informed of work being done and by resolving issues that are critical to the functioning of the University. As part of this relationship, the University provides an annual scholarship to a resident of Ciudad Colón.

J. Financial situation and governance

64. Notwithstanding the appeal for contributions by the Secretary-General in his reports to the General Assembly in 2009 (A/64/281), in 2012 (A/67/272) and again in 2015 (A/70/288), and by the Assembly in its resolution 70/79, in which the Assembly invited Member States to make financial contributions to the University, very few countries have provided voluntary support. The University and the Government of Costa Rica signed an additional protocol to the headquarters agreement, providing a small permanent annual contribution to the University ($50,000), and two other countries have followed suit. International experience shows that universities around the world must rely on endowments and contributions to support themselves, and the University is exploring ways in which it can implement that model.

65. At the close of the 2017–2018 fiscal period, the University has almost completely eliminated the deficit it has been carrying since 2010, in excess of $1.5 million. This was achieved through a combination of drastic cost-cutting measures, the implementation of capacity-building initiatives as a way to increase revenue and a series of fundraising efforts.

66. The University's objective is to be self-sustaining by using income generated by its teaching and training programmes and through the support of Member States and donations and special projects. The University extends its special gratitude to the Nippon Foundation for its significant support of the University through its Asian Peacebuilders Scholarship programme, which recently celebrated its tenth anniversary, with celebrations in Costa Rica, Japan, the Philippines and Thailand. The University would also like to express its appreciation to the European Union, the Government of Germany, through the German Cooperation Agency and the German Academic Exchange Service, the Swiss Government, including the Swiss Cooperation for Development, the National Dutch Postcode Lottery and the Government of the United States for their partnership in key projects.

67. As requested by the Council of the University, the University for Peace has developed and adopted policies on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority and on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations. Those policies are in keeping with the Secretary-General's strong emphasis on an absolute zero-tolerance policy as regards discrimination, harassment, including sexual harassment, and abuse of authority, and on the need to protect whistle-blowers. The University is determined to ensure that all relevant mechanisms are in place to prevent and address incidents of misconduct of this nature in a fair and transparent manner. The University is working to fully implement those policies under the guidance of the Council.

K. Development strategy

1. Short-term strategy 2018–2021

68. As it nears its fortieth anniversary, the University is initiating a process of reflection about the pursuit of its mission and how it can strengthen and expand its

global reach. The University has established a short-term development strategy to maximize its development and growth over the next three years.

69. In particular, the University will focus on strengthening its ties with the signatory States of its charter. The University is in a position to provide training to government officials, civil society organizations, private sector actors and non-governmental organizations. In this regard, the University is strengthening its capacity to fulfil its mandate by adding high-level professionals with extensive experience to its staff and faculty.

70. The University will coordinate its work agenda with that of the United Nations under the leadership of the Secretary-General in order to seek the synergies necessary to implement the mandate of the University for Peace, in the spirit of General Assembly resolution 70/79.

71. The University will further focus on its global growth through its representatives in New York, Geneva and Addis Ababa, with local political and diplomatic support and the mobilization of resources to strengthen the mandate of the University in those regions, in the spirit of resolution 70/79, in which Member States are invited to sign the International Agreement for the Establishment of the University for Peace and when possible, make financial contributions that will make it possible for the University to offer its programmes of study to all students who wish to participate in them, and facilitate the University's operations in host countries.

72. The University will strive to strengthen training programmes at headquarters in Costa Rica and throughout the world, through the promotion, dissemination and support of the work of the University. With the growth of both its traditional academic programmes and customized training programmes, the sustainability of the work of the University and the pursuit of its mission are guaranteed.

73. The University will also work on prioritizing its relationship with the host country. Relevant action began during the rector's first term and led to a permanent annual contribution on behalf of the Government of Costa Rica to the University. The University is now seeking to build on this partnership in a number of areas, including international law, human rights, gender mainstreaming, sustainable development and other areas of expertise.

74. The University for Peace seeks to transversally incorporate a practical humanitarian experience within all of its academic programmes. This component has been present in several field courses offered over the past several years, including an emergency field training course conducted on campus every year.

75. The University is also proposing the creation of universities as peace spheres, which it hopes to implement in Central America in collaboration with important regional institutions before looking to expand to other regions. The proposal seeks to create a global network of universities for peace, which will serve as spaces for interaction around topics of peace and conflict, with a vision of contributing to peaceful and democratic coexistence, particularly in conflict areas.

2. Long-term vision

76. The University must promote both its role as an international academic institution and as a centre for political dialogue. It has carried out a comprehensive process of academic reform to better execute its mission. The vision for an even more vigorous and effective institution in the long term includes the consolidation and reinforcement of the capacities of the main campus to serve the entire University system through curriculum development, face-to-face teaching and research and sustained two-way links with the considerable experience and knowledge found in institutional partners in other parts of the world. Strengthening the influence and

presence of the University in different regions and offering an active programme for sharing knowledge for peace, including distance learning and the dissemination of toolkits for teaching, will also be expanded in terms of content and reach.

77. With this strategy, the University will reinforce its ability to train new generations in the resolution and transformation of increasingly complex and interdependent conflicts. Similarly, the work conducted will have strengthened its position in providing quality postgraduate education and training governmental and civil society actors. The University's programmes will be re-evaluated on an ongoing basis to ensure academic excellence and harmony in the analysis of old and new conflicts, the causes and characteristics in each region and, in particular, the complicated links between political, ethnic and religious causes and criminal activity. This greater capacity for analysis needs to be transformed into curricula, specific education programmes and training opportunities for a range of actors. This relaunch will make it possible for the University to design a long-term perspective to contribute substantially to the institutional work of effective and cooperative multilateralism.

III. Conclusions

78. In the appendix to the charter of the University, a statement made by the founders of the University has never been more relevant than at the present moment:

> The persistence of war in the history of mankind and the growing threats against peace in recent decades jeopardize the very existence of the human race and make it imperative that peace should no longer be viewed as a negative concept, as the end of conflict or as a simple diplomatic compromise, but rather that it should be achieved and ensured through the most valuable and most effective resource that man possesses: education

79. The University is carrying out a mission that is central to the future of the world. Education for peace must be expanded until it touches all people everywhere, convincing them that armed conflict must be relegated to the past. This will be accomplished only through the ongoing training, at the academic level, of future world leaders from Governments, non-governmental organizations and the private sector in peaceful conflict resolution and the relationship between peace, development, human rights and environmental protection as conditions for economic development and increased equality.

80. For the University to accomplish its mission, Member States must take the lead in supporting that mission by recognizing the institution through generous financial contributions that will make it possible for the University to offer its programmes of study to all students who wish to participate in them and facilitating the University's operations in host countries. Member States could therefore consider increasing their support of the University by providing resources as extrabudgetary funds.

81. The 2030 Agenda for Sustainable Development is a global agenda designed to deal with development and inclusion. As an academic institution, the University works to contribute to all 17 Sustainable Development Goals from the theoretical point of view, with specific attention on certain individual topics, such as Goal 5, on gender equality, through the master's degree in gender and peacebuilding; Goal 6, on clean water and sanitation, through the master's degree in water cooperation and diplomacy in partnership with IHE Delft Institute for Water Education and Oregon State University; and Goal 13, on climate action, through the master's degree in environment, development and peace, with a specialization in climate change policy.

82. As it approaches its fortieth anniversary, the University's strategy has migrated towards a more effective internationalization process, where the role of Asian

countries has increased, with China, India, Japan and the Republic of Korea demonstrating a keen interest in the University and its mandate. This will allow the University to consolidate its financial position while simultaneously contributing to the training of new leaders for peace in Asia.

83. The academic strategy of the University focuses on training leaders for peace in different parts of the world, in the form of master's and doctoral degrees, as well as a series of capacity-building and training programmes, which coincide with the global vision of the General Assembly in matters pertaining to peace education and preventive education.

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Seventy-third session
Item 74 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Extrajudicial, summary or arbitrary executions

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, Agnes Callamard, submitted in accordance with Assembly resolution 71/198.

* A/73/150.

** The present report was submitted after the deadline in order to be able to reflect the most recent developments.

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Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions

Saving lives is not a crime

Summary

The present report contains an outline of the main activities undertaken by the Special Rapporteur from 1 February 2017 to 31 July 2018, including 183 communications to States and non-State actors, 78 press statements and her second report to the Human Rights Council on the human rights obligations of armed non-State actors with respect to the right to life.

Entitled "Saving lives is not a crime", the present report is focused on the criminalization and targeting of humanitarian services and actors arising from activities to fight terrorism and deter migration and from the outlawing or stigmatization of sexual and reproductive rights. The Special Rapporteur argues that by obstructing the provision of life-saving services and criminalizing acts of solidarity, States are violating normative pillars of international human rights and humanitarian law. What follows are arbitrary deprivations of life under the convenient banners of fighting terrorism, combating smuggling or guarding social mores.

Some positive, yet ad hoc, developments at the United Nations are identified, along with good practices of Member States, which ought to be expanded and emulated. The Special Rapporteur recommends in particular that the Security Council adopt a resolution exempting humanitarian actions from all counter-terrorism measures, exempting humanitarian acts and acts of solidarity from national smuggling legislation and narrowing the international funding gap for comprehensive sexual and reproductive health services. She calls upon States to end all forms of criminalization, harassment and stigmatization of individuals and organizations providing life-saving services.

18-13000

I. Introduction

1. The present report is submitted by the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 71/198 and Human Rights Council resolution 35/15. It summarizes the activities undertaken by the Special Rapporteur during the past year and includes her thematic report focusing on the criminalization and targeting of life-saving and protective services for people in need.

II. Activities of the Special Rapporteur

A. Country visits

2. At the invitation of the respective Governments, the Special Rapporteur carried out official visits to Iraq from 14 to 23 November 2017 (A/HRC/38/44/Add.1) and to El Salvador from 25 January to 5 February 2018 (the report on which will be issued under the symbol A/HRC/38/44/Add.2).

3. The Special Rapporteur sent requests for official visits to the Governments of Afghanistan, Bangladesh, Brazil, the Democratic Republic of the Congo, Libya, the Syrian Arab Republic, the United States of America and Venezuela (Bolivarian Republic of), and reminders to Kenya, Nigeria, Pakistan and Yemen.

4. She thanks the Governments of Mozambique and Nigeria for responding positively to her requests to visit and encourages the Governments of the other above-mentioned States to extend an invitation for a visit in the near future.

B. Communications and press releases

5. Between 1 February 2017 and 31 July 2018, the Special Rapporteur issued, alone or jointly with other special procedures, a total of 183 communications to States and non-State actors and 78 press statements. Detailed information can be found in the overview of the activities of the Special Rapporteur (A/HRC/38/44/Add.3) and the public communications database for special procedures.[1]

C. Meetings and other activities

6. The Special Rapporteur presented her second report to the Human Rights Council on the human rights obligations of armed non-State actors with respect to the right to life (to be issued under the symbol A/HRC/38/44).

7. From July 2017 to July 2018, the Special Rapporteur chaired, organized and/or participated in 22 international meetings, conferences and other events, a number of which are listed below (for a full overview, see A/HRC/38/44/Add.3):

- Expert workshop on witchcraft and human rights organized by the independent expert on the enjoyment of human rights by persons with albinism (September 2017, Geneva)
- Global compact for migration, preparatory meeting (December 2017, Puerto Vallarta, Mexico)

[1] https://spcommreports.ohchr.org/

- Briefing for Security Council members on Iraq organized by the Government of the Netherlands (February 2018, New York)
- Expert meeting on the draft treaty on crimes against humanity (March 2018, New York)
- Expert panel on accountability for killings of women and lesbian, gay, bisexual, transgender and intersex persons during conflict, held on the sidelines of the session of the Commission on the Status of Women (March 2018, New York)
- Celebration of the twenty-fifth anniversary of the World Conference on Human Rights, Federal Ministry for Foreign Affairs of Austria (May 2018, Vienna)
- Launch of the inquiry report of the All-Party Parliamentary Group on Drones of the United Kingdom of Great Britain and Northern Ireland, "The UK's use of armed drones: working with partners" (July 2018, London)

III. Saving lives is not a crime

8. In 2017, 73 individuals signed the following statement:[2]

> We the undersigned, Jewish children hidden during the Second World War to escape deportation, solemnly declare: if we are alive, it is because a united group of lawbreakers disobeyed, hid us, fed us, despite the laws of the Vichy regime and the occupying force. They opened their doors and falsified our identities; they kept their silence, ignoring orders of the police and the administration, and took back roads in the face of persecution.
>
> Their solidarity has now been publicly recognized. We are grateful to them, as we are grateful for the courage of our parents, who made the hard choice to separate from us, turning us into "unaccompanied minors".
>
> But this duty of solidarity also applies today, and we call for an end to these intimidating procedures. We proclaim the legitimacy of citizens' right to scrutinize administrative, judicial or police practices. We stand with those who show solidarity with people in precarious situations without regard to the legality of their residency status. We pass the torch of solidarity to whistleblowers, to citizens critical of xenophobic policies, to those in solidarity with everyday life.

9. Humanitarian action in the form of life-saving measures taken by private individuals can be traced back over hundreds of years and across the globe.[3] Diverse faiths, beliefs and moral frameworks have shaped what emerges today as the modern humanitarian regime. Concepts of charity, solidarity and protection of "the stranger" figure prominently in the historical shaping of societies around the world. The anti-slavery movements, for example, consolidated a conviction in the legitimacy of personal action in violation of national laws, generated by the suffering of slaves and grounded in the ethics of universal humanity. As John Brown remarked at an anti-slavery convention in 1859, talk will never free the slaves. To end the

[2] See Union juive française pour la paix, "*Manifeste des enfants cachés*", 6 April 2017.

[3] In the present report humanitarian actions and/or services are defined as acts intended to protect life, including life with dignity. This definition includes actions carried out by organizations and individuals and covers both assistance and protection. It is based on the International Court of Justice definition, namely, acts "to prevent and alleviate human suffering wherever it may be found" and "to protect life and health and to ensure respect for the human being". It is also derived from the jurisprudence on dignified life. See *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, ICJ Reports 1986*, para. 242.

abomination, abolitionists needed action. Time and again, individuals, alone or with others, have felt compelled to act to save lives or protect the right to live with dignity, in the name of solidarity with the common humanity of all human beings.

10. In our modern world, millions are on the move globally, with thousands dying each year as they seek to escape war, persecution, climate degradation and poverty. Responding in the name of deterrence, Governments are exacerbating, not reducing, the dangers faced by those on the move. Appalled by human suffering, people around the world are stepping up to offer rescue activities and support, including food, water, medical services, lodging and transportation. The result is that civic humanitarian services are reaching levels not seen since the aftermath of the Second World War.[4] Governments have reacted by harassing and even prosecuting both spontaneous and organized humanitarian acts.

11. At the direction of the Security Council, Governments have instituted counter-terrorism legislative frameworks that, given their stringency, potentially criminalize even life-saving medical aid or food relief, and in any case impose chilling effects on the provision of humanitarian aid for people desperately in need of help.

12. Various States have also adopted laws or measures preventing or hindering organizations from providing life-saving services to girls, women and lesbian, gay, bisexual, transgender and intersex persons, thus contributing to increased rates of otherwise preventable morbidity and mortality.

13. In the present report, it is asserted that saving lives should never be a crime. The argument is made that the failure to exempt humanitarian services from the overreach of punishing policies, the active obstruction of life-saving services and/or the criminalization of acts of solidarity and compassion constitute violations of the State's obligation to protect the right to life. Any deaths attributable to such measures amount to the arbitrary deprivation of life, which engages the responsibility of the State.

Prohibition of the arbitrary deprivation of life

14. The right not to be arbitrarily deprived of life is a foundational and universally recognized right, applicable at all times and in all circumstances, including during armed conflict and other public emergencies. The right to life is protected by international and regional treaties, customary international law and national legal systems (A/72/335, para. 14).

15. Article 6.1 of the International Covenant on Civil and Political Rights provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of his life. Article 26 provides that everyone is entitled to the equal protection of the law without any discrimination. Arbitrariness may be inferred from laws and practices that violate the principle of non-discrimination and that may be unnecessary and disproportionate (see A/HRC/35/23, para. 33). Legal measures aimed at protecting the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination. Any deprivation of life based on discrimination in law or in practice is ipso facto arbitrary in nature. As noted previously, deliberate intent on the part of the State is not required for a killing or a deprivation of life to be deemed arbitrary (ibid., para. 34).

16. States must prevent the arbitrary deprivation of life, including through an appropriate framework of laws, institutions and procedures. States must respect the right to life by ensuring that their organs and agents do not deprive any person of life

[4] See Liz Fekete, "Humanitarianism: the unacceptable face of solidarity", Institute of Race Relations, 2017.

arbitrarily. They must also protect and fulfil the right to life by exercising due diligence to prevent the deprivation of life by private actors.

17. The deprivation of life by the State cannot be justified on any basis other than that it is required to save life. Limitations on the right to life cannot be justified on the grounds of national security, the protection of property, the assertion of the authority of the State or the imposition of moral or religious values (see A/71/372).

18. The State has a positive and substantive duty to take preventive action where there are foreseeable threats to life originating from either State authorities or private actors within its jurisdiction. This obligation also arises in the event of life-threatening situations, such as natural hazards, that State authorities knew or ought to have known about, and it applies even if the population at risk acted unlawfully.[5] The obligation of States to respect and ensure the right to life extends to all threats that can cause death, even if such threats have not yet resulted in death.[6]

Right to life, including to food, shelter, water and sanitation, and health

19. The right to life is inextricably linked to the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights, such as the right to physical and mental health, the right to food or the right to water. In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights of 1993 (A/CONF.157/23), the indivisibility of all human rights was reaffirmed, and a complaints procedure was established in 2008 under the Optional Protocol to the Covenant.

20. The Human Rights Committee recognized that the right to life should not be interpreted narrowly, noting that it places not only negative obligations on States (e.g. to not kill), but also positive obligations (e.g. to protect life), to ensure access to the basic conditions necessary to sustain life (see HRI/GEN/1/Rev.1, part I). It has affirmed that measures that restrict access to basic and life-saving services, such as food, health, electricity and water and sanitation are contrary to article 6 of the International Covenant on Civil and Political Rights (CCPR/C/ISR/CO/4, para. 12). It has expressed concern that article 6 may be violated by the absence of measures to deal with food and nutrition and to address, in cooperation with the international community, the causes and consequences of drought and other natural disasters (CCPR/CO/72/PRK, para. 12) For instance, denying access to water, through disconnections or otherwise, and destroying sanitation infrastructure can be deemed to be in violation of the right to life (see also CCPR/C/ISR/CO/3).

21. The failure of States to provide access to health care, including through restrictions on health-care providers,[7] may violate the right to life.[8] The respect by States of the right to health means that they must not discriminate with regard to the access of individuals to health-care services and must refrain from compelling health practitioners to deny health care to certain individuals. This obligation includes eschewing the formulation of policies or practices that directly or indirectly impede

[5] See European Court of Human Rights, *Keenan v. the United Kingdom*, No. 27229/95, 2001; *Osman v. the United Kingdom*, No. 87/1997/871/1083, 1998; *Budayeva and others v. Russia*, Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 2008; *Oneryildiz v. Turkey*, No. 48939/99, 2004.

[6] See CCPR/C/70/D/821/1998, para. 5.2; European Court of Human Rights, *Ilhan v. Turkey*, No. 22277/93, 2000, paras. 75–76; Inter-American Court of Human Rights, *Rochela Massacre v. Colombia*, 2007, para. 127.

[7] See Marine Buissonniere, Sarah Woznick and Leonard Rubenstein, "The criminalization of healthcare: safeguarding health in conflict", Johns Hopkins Bloomberg School of Public Health and Essex University, June 2018.

[8] See Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay*, 2006.

access to health care of groups that may be unpopular, such as migrants, or those suspected of or involved in opposition, terrorism or protest movements, as well as ordinary citizens, such as women exercising their reproductive rights (see E/CN.4/2003/58, para. 97). Respecting the right to health requires States to refrain from limiting access to health services as a punitive measure (see E/C.12/2000/4, para. 34), from formulating laws and policies that criminalize the provision of health care by health professionals or that interfere with their duty to provide services in an impartial manner (see A/68/297, para. 70 (c)). Failure to respect the right to health cannot be excused on the grounds of limited resources, security or any other grounds.[9]

Humanitarian action

22. With regard to humanitarian services, a State has two sets of obligations: a positive obligation to agree to and facilitate such services and a negative obligation not to impede the offer and provision of humanitarian services to individuals and populations in need.

23. International humanitarian law clearly imposes an obligation to respect and protect humanitarian actors. Parties to an armed conflict must protect civilian humanitarian actors, not just from attack, but also from harassment, intimidation, arbitrary detention and any other activities that might impede their work. This set of protections is of a corollary nature: the primary obligation is on the party to the conflict to provide for the population, yet when that party fails to discharge its obligation, individuals, as well as impartial humanitarian bodies, may offer and provide their services. Those protections undergird the prohibition under customary international humanitarian law of starving civilians as a method of warfare or combat and of attacking or destroying objects that are indispensable to their survival. Protecting humanitarian actors is an indispensable condition for the delivery of essential care.[10]

24. Under this framework, when the civilian population is not adequately supplied, no party to an armed conflict may arbitrarily withhold consent to offers of legitimate humanitarian services from an impartial humanitarian body. Refusing relief action or consignments is thus not a matter of discretion.[11] Since 1864, it has been an established matter under humanitarian law that the civilian population itself, as well as local organizations, may provide humanitarian services on their own initiative:

> If the survival of the population is threatened and a humanitarian organization fulfilling the required conditions of impartiality and non-discrimination is able to remedy this situation, relief actions must take place.... The authorities responsible for safeguarding the population in the whole of the territory of the State cannot refuse such relief without good grounds. Such a refusal would be equivalent to a violation of the rule prohibiting the use of starvation as a method of combat as the population would be left deliberately to die of hunger without any measures being taken.[12]

25. The obligation to allow and not impede humanitarian action has increasingly been recognized by "soft law" instruments in emergency situations. An example is

[9] See E/C.12/1999/5, para. 19, and A/HRC/S-17/2/Add.1, para. 81.

[10] See International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, rule 31.

[11] See Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC, Geneva, 1987), para. 2808; Jelena Pejic, "The right to food in situations of armed conflict: the legal framework", *International Review of the Red Cross*, vol. 83, No. 844 (December 2001); and the Rome Statute of the International Criminal Court.

[12] Sandoz et al., *Commentary on the Additional Protocols*, para. 4885.

emerging international law on disaster assistance.[13] Principle 25 of the Guiding Principles on Internal Displacement provides that all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced. It also provides that consent shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance. The International Red Cross and Red Crescent Movement, in its code of conduct, has called for the recognition of a distinct right to receive humanitarian assistance as a fundamental humanitarian principle which should be enjoyed by all citizens of all countries. Those instruments tend to focus on State obligations with regard to international humanitarian actions, which raises a range of issues related to national sovereignty, many of which are not present in the case of domestic humanitarian actors.

26. Under international human rights law, the absolute right to life entails a negative obligation on the State not to engage in acts — such as the prohibition, criminalization or impediment of humanitarian actions — that would jeopardize the enjoyment of that right. States might justify such acts in response to perceived threats to national security or social norms. The Special Rapporteur equates them to a qualified use of force, thus requiring that they be both necessary and proportional. It is impossible to imagine how acts whose likely result is the potential death of civilians could ever meet those criteria (i.e. could be justified by the need to protect life).

27. Acts prohibiting or otherwise impeding humanitarian services violate the obligation of States to respect the right to life. Any death linked to such prohibition would constitute an arbitrary deprivation of life.

28. Such prohibition or impediment also violates the positive obligations of States. The Committee on Economic, Social and Cultural Rights has stated that the realization of such rights to the maximum of a State's available resources refers to both the resources existing within a State and those available from the international community through international cooperation and assistance (E/1991/23, annex III, para. 13). With respect to the right to food, the Committee articulated an obligation to seek and obtain international support to ensure the availability and accessibility of the necessary food (E/C.12/1999/5, para. 17). It also listed direct violations of the right to life, including:

> denial of access to food to particular individuals or groups, whether the discrimination is based on legislation or is proactive; the prevention of access to humanitarian food aid in internal conflicts or other emergency situations; adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food; and failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations (ibid., para. 19).

29. When the State is not providing food, water, shelter or rescue mechanisms sufficient to protect life and dignity, humanitarian actors are indispensable in delivering those services. As highlighted in the judgment from a French court excerpted below, the State has a positive obligation to seek and facilitate humanitarian action (through an act of delegation) and a negative obligation not to prevent it:

> Whereas, it being a matter of a fundamental freedom, the State, if it does not have the means to satisfy a request of a homeless person for shelter, must

[13] See resolution 46/182, para. 6, and draft articles on the protection of persons in the event of disasters, articles 6, 10 and 11 (A/71/10, para. 48).

delegate this duty to provide emergency shelter to any other legal or natural person having the capacity to accommodate homeless people; ...

Whereas it is therefore paradoxical that the State continues today to prosecute [Father Riffard] for having done what it should have done itself;[14]

30. Finally, both in and outside the context of armed conflict, laws and policies aimed at seeking to prevent the provision of life-saving and life-sustaining services to populations because of their ethnicity, religion or immigration status constitute a violation of article 6 of the International Covenant on Civil and Political Rights. The State may not fail to discharge its obligation to respect and protect the right to life and then exacerbate and compound that failure by precluding others from undertaking activities aimed at providing that core obligation, particularly if the actions or inactions of the State are driven by discriminatory motives or result in discrimination.

IV. Implications of measures to combat terrorism

31. In a series of resolutions, the Security Council has required Member States to apply various measures to counter terrorism. In general terms, the resolutions require the suppression, including through criminal prosecution, of those providing funds or services to designated terrorists or in other ways supporting terrorist acts.[15] The Council has added individuals and organizations to sanctions lists based in part on their having provided medical services and supplies.[16] It has not, however, defined what constitutes an act of terrorism (see A/HRC/16/51).

32. The resulting creation of a sizable body of new norms, amounting to a counter-terrorism regime (see A/71/384, paras. 23–27), has led to a corresponding expansion in donor demands on humanitarian actors:

> counterterrorism-based regulations and requirements are increasing and are spreading not only geographically but also in terms of the range of government and agency donors adopting more restrictive counterterrorism approaches. What may have once been seen as a tension arising primarily from one or two major donors may now constitute a range of counterterrorism-based policies and regulations that must be negotiated with virtually all government donors, donor funds, and intergovernmental donors.[17]

33. The bulk of those regimes are based on the premise of an overly broad notion of acts that support terrorism and do not take sufficiently into account protected, including life-saving, activities. In its resolutions the Security Council often proclaims, frequently in the preambular paragraphs, that Member States must ensure that counter-terrorism measures are in compliance with their obligations under international law, in particular international human rights, refugee and humanitarian law (see, e.g., Council resolution 2178 (2014)). As noted below, such compliance has been implemented inconsistently. The lack of a globally agreed definition of terrorism has meant that States have adopted unacceptably wide and nefarious definitions in national law. The knock-on effect is that a wide range of humanitarian acts are tagged

[14] Tribunal de police, Saint-Etienne, France, 11 June 2014.

[15] See Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017).

[16] See Dustin A. Lewis, Naz K. Modirzadeh and Gabriella Blum, *Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism* (Harvard Law School Program on International Law and Armed Conflict, September 2015).

[17] See Naz K. Modirzadeh, "Comment on the pilot empirical survey study on the impact of counterterrorism measures on humanitarian action", Harvard Law School Program on International Law and Armed Conflict, Counterterrorism and Humanitarian Engagement Project, March 2017.

as being supportive of terrorism. What follows is the abrogation of the right to life, perpetrated under the convenient banner of terrorism.

International principles of humanity for the enemy

34. One of the most fundamental norms of international humanitarian law is the need to protect the provision of impartial medical care to all wounded and sick persons, including members of adversarial parties and the population under its control. This is a norm that is under direct attack by the application of counter-terrorism measures. For instance, States are convicting individual doctors who provide impartial medical treatment to designated terrorist groups.[18] Customary international law provides that medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances.[19] The term "medical personnel" is understood in a broad sense to include any person engaged in medical activities. It covers those working for the armed party, as well as medical personnel made available to that party by a humanitarian organization. Importantly, since 1864, international humanitarian law has also established legal protections for unassigned medical caregivers (those not authorized and controlled by a party to the conflict), such as indigenous doctors and nurses.

35. Under international humanitarian law, in no circumstances should any person be punished for having provided medical services compatible with medical ethics, regardless of the person benefiting therefrom.[20] This protection arises against the broader normative backdrop, in which the wounded and sick, as defined in international humanitarian law, must receive all feasible medical care required by their condition and that care must be provided as soon as practicable and be guided by medical need without adverse discrimination on any (i.e., non-medical) ground. If a party to the conflict is not providing such care, an impartial humanitarian body or private individual caregivers may themselves provide it. This system of protections has been conceived as bestowing upon medical personnel a right, and indeed a duty, to administer care to one's worst enemies if they are wounded, even in the middle of the most cruel battle.[21] In its common ethical principles of health care in conflict and other emergencies, the International Committee of the Red Cross insists that health-care personnel shall provide the necessary care with humanity, while respecting the dignity of the person concerned, with no discrimination of any kind, whether in times of peace or conflict, or during other emergencies.[22]

Prosecution for providing humanitarian aid to civilian populations

36. It bears repeating that international humanitarian law continues to apply to conflicts, notwithstanding the incidence of acts of terrorism; the occurrence of such acts does not displace international humanitarian law.

37. Particularly problematic counter-terrorism prohibitions are those relating to the provision of services and funding to those deemed terrorists by one party to a conflict (see A/HRC/23/39, paras. 22–26). The failure to clearly exempt humanitarian actors[23]

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[18] See United States District Court for the Southern District of New York, *United States v. Shah*, 474 F. Supp. 2d 492 (S.D.N.Y. 2007).

[19] See ICRC, Customary International Humanitarian Law Database, rule 25.

[20] See Protocol I additional to the Geneva Conventions of 12 August 1949, article 16.1, and Additional Protocol II, article 10.1; see also Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, article 18, and ICRC, Customary International Humanitarian Law Database, rule 26.

[21] See Sandoz et al., *Commentary on the Additional Protocols*, para. 660.

[22] See Buissonniere et al., "The criminalization of healthcare".

[23] Humanitarian actors include health-care providers not associated with humanitarian organizations.

inhibits humanitarian aid, as legitimate humanitarian activities might be deemed impermissible forms of support to so-called terrorists. Donors have similar concerns about the funding they provide. The fear of prosecution prevents critical aid from reaching the populations controlled by "terrorist" organizations and is thus likely to result in greater harm to life and civilian deaths.

38. One of the most influential countries in this area is the United States, given its extensive role in the global banking system.[24] Its laws appear to criminalize effectively all aid and support that are deemed to benefit designated "terrorist" organizations, including medical aid to civilian populations under their control. They prohibit the provision of "material support or resources to a foreign terrorist organization", including "expert advice or assistance". Only medicine and religious materials are exempted from this prohibition.[25] In 2010, the United States Supreme Court ruled that the material support statute was constitutional and explained that even support intended to promote peaceable, lawful conduct could free up resources of terrorist organizations for other purposes and could give the terrorist organization legitimacy.[26] This so-called fungible argument has further lowered the evidentiary test by rejecting specific intent to further "terrorist" activities and privileging the much lower threshold of knowledge about an organization's connection to "terrorism".

39. Some States have accepted the proposition that humanitarian actors should be able to provide humanitarian services to those under the control of "terrorist" organizations, but their response is ad hoc and may rely solely on prosecutorial discretion. The United Kingdom, for example, has issued policy guidance indicating that the risk of prosecution for legitimate humanitarian or conflict resolution work is low, but is not zero.[27] Such measures do not sufficiently protect humanitarians, as they are forced to rely on Government discretion in determining whether they will be criminally charged.

Funding and banking

40. Bans on funding or providing economic resources to a "terrorist" organization have also proven problematic, and they impose significant burdens on non-governmental organizations (NGOs) and individuals providing potentially vital assistance. Governments and even banks are empowered to make potentially arbitrary decisions concerning the assets of individuals and organizations, including humanitarian organizations. The United States, for example, has frozen the assets of numerous Muslim charities, and many Muslims are afraid to give money to charity groups in case they may be suspected of providing material support to terrorism (A/HRC/6/17, para. 42).

41. The Financial Action Task Force, an intergovernmental body established in 1989 to address the issue of money-laundering and "terrorist" financing, has failed to provide specific measures to protect the civil society sector from undue restrictions. The Task Force, in its recommendation 8 on combating the abuse of non-profit organizations, recommends that countries review the adequacy of their laws and regulations to ensure that entities are not abused for the financing of terrorism. Very

[24] See Duke Law International Human Rights Clinic and Women Peacemakers Program, "Tightening the purse strings: what countering terrorism financing costs gender equality and security", March 2017.

[25] See Code of the Laws of the United States, 18 U.S.C. § 2339A and § 2339B.

[26] See United States Supreme Court, *Holder v. Humanitarian Law Project*, 130 S.Ct. 2705 (2010). This case dealt with human rights work provided directly to a designated terrorist organization. The Court indicated that Congress had avoided any restriction on any activities not directed to, coordinated with, or controlled by foreign terrorist groups.

[27] See United Kingdom, Home Office, Office of Financial Sanctions Implementation, "Guidance for information note: operating within counter-terrorism legislation", June 2016.

few if any instances of "terrorism" financing have been detected as a result of these supervisory measures, whereas recommendation 8 has been misused by States to violate international law (A/HRC/23/39, para. 25).

42. Humanitarian organizations are now routinely monitored by banks and major donors that insert clauses into their agreements requiring compliance with Security Council resolutions, counter-terrorism laws or other administrative or regulatory requirements. Donors and banks may require organizations to vet their local partners and provide personal information on individuals and detailed reporting on activities. These demands are time-consuming and financially burdensome. Moreover, humanitarian organizations have expressed concerns that those requirements undermine their neutrality and make local acceptance harder to achieve.[28] Banks can deny banking privileges at their discretion to any organization considered a legal risk under the counter-terrorism regime.[29] The resulting limited access to banking transactions is a particular problem for smaller as well as Muslim non-profit organizations and has increased danger in the field as a result of individuals travelling with more cash.

43. Importantly, prohibitions on the financing of terrorism may capture not only payments to partners on the ground, but also a wide variety of operational expenditures, such as administrative fees, checkpoint payments or taxes or purchase of fuel, all of which can be considered prohibited economic resources under counter-terrorism measures.[30]

44. In response to such concerns, some States point to licensing programmes that would protect humanitarian actors from prosecution, but this bureaucratic, often lengthy process does not address the potentially fast-changing needs of populations or unanticipated payments that are made to contend with local circumstances. Equally problematic is the danger that obtaining a licence may undermine the reputation for neutrality and endanger aid workers in the region, who might be perceived as agents of the licensing governments.

Impact on affected populations

45. The net effect of those burdens, along with the increasingly risk-averse responses of governments, banks, donors and humanitarian agencies, is a significant decrease in humanitarian aid for critically endangered populations. For example, the United States shut down Al Barakat, the main organization providing money transfers to Somalia, an action that had a deleterious humanitarian impact on the region, even though the Government never disclosed evidence of ties to terrorism (A/HRC/6/17, para. 48). Humanitarian organizations were asked to perform pre-vetting finance checks, tracking systems, real-time monitoring, verification of partners' shareholders, a bond system (requiring a deposit of 30 per cent of the value of goods transported) and the contractual assumption of 100 per cent of financial liability for shipments lost or stolen by contractors. Funding to humanitarian organizations operating in Somalia declined by 50 per cent from 2008 to 2011. Once the famine hit, the United States Office of Foreign Assets Control eased requirements, indicating that incidental benefits to the designated terrorist organization, Al-Shabaab, such as food and medicine, were not a focus of its sanctions enforcement, but this was not clear

[28] See Sara Pantuliano and others, "Counter-terrorism and humanitarian action: tensions, impact and ways forward", Humanitarian Policy Group, Policy Brief 43, October 2011.

[29] Even though it has since been modified, early guidance from the Task Force, in its recommendation 8, may have contributed to this risk-averse banking climate.

[30] See Pantuliano et al., "Counter-terrorism and humanitarian action".

protection against criminal enforcement.[31] A quarter of a million people starved during that famine.

46. In Gaza, relief efforts have been severely hampered since the election of Hamas, after the United States and the European Union designated it a terrorist organization. Non-profit organizations need to apply for licences from the Office of Foreign Assets Control on a project-by-project basis, and they face significant administrative burdens. Organizations cannot coordinate with government officials, which in turn leads to the Hamas government harassing humanitarian agencies for their perceived links to the United States and European Union. Many Islamic organizations have stopped their operations in Gaza to avoid prosecutorial scrutiny in the United States. International NGOs have developed their own independent relief programmes to avoid the legal hurdles of partnering, causing the provision of parallel services and the duplication of efforts.[32]

47. The potential abuse of counter-terrorism regimes is evidenced by the restrictions Myanmar has placed on aid for internally displaced persons in Kachin State, where it has in some instances effectively blocked all aid. An estimated 97,000 such persons, around 76 per cent of whom are women and children, are spread across 140 displacement sites in the State. The inability of humanitarian groups to reach this population is causing widespread shortages of food, water, medical care and other essential supplies, as well as increased human suffering. In the face of those shortages, on 21 May 2018 the Kachin State Minister of Security and Border Affairs sent a letter to the Kachin Baptist Convention, one of the largest providers of aid to displaced communities, threatening it with prosecution under the Unlawful Association Act for providing aid to communities in conflict-affected areas of the State.

A solid exemption regime

48. There is a sense of an international counter-terrorism regime out of control, its tentacles reaching every corner of political, financial and civic life. There have been some targeted efforts to mitigate the unintended consequences of counter-terrorism on humanitarian aid in particular regions,[33] though primarily through ad hoc and piecemeal exemptions.

49. For instance, the Security Council, in its resolution 1916 (2010), exempts from sanctions "the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners". But this measure does not apply to other humanitarian programmes and must be renewed repeatedly. The General Assembly, in its recent resolutions on the United Nations Global Counter-Terrorism Strategy Review (resolutions 70/291 and 72/284), urged "States to ensure, in accordance with their obligations under international law and national regulations, and whenever international humanitarian law is applicable, that counter-terrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors as foreseen by international humanitarian law".

50. The European Union, in its Directive 2017/541 on combating terrorism, excludes from the scope of the Directive the provision of humanitarian activities by

[31] Ibid.

[32] Ibid., see also Office of the United Nations High Commissioner for Human Rights, "Occupied Palestinian Territory: bleakest picture yet, says UN expert after regional visit", 29 June 2018.

[33] The United Kingdom initiated a "safer corridor pilot project" for remittance flows to Somalia, focused on the ability of non-governmental organizations to send money to support their own operations (see A/70/371).

impartial humanitarian organizations recognized by international law, including international humanitarian law. The Directive has the potential to have a significant impact, and Member States have until 8 September 2018 to make the necessary legal and regulatory changes to comply with it.

51. Certain States provide possible national models. Switzerland exempts funds intended to support acts that do not violate the rules of international law on the conduct of armed conflicts. Canada also excludes an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law. Australia exempts from the ban on association with terrorist organizations those that do so only for the purpose of providing aid of a humanitarian nature, but this exemption is absent from much of its broader counter-terrorism regime. [34] The 2002 Terrorism Suppression Act of New Zealand provides that making property or financial or related services available to designated terrorist entities is prohibited unless a lawful justification or reasonable excuse exists, such as where the property (e.g. items of food, clothing or medicine) is made available in an act that does no more than satisfy essential human needs of an individual (or a dependant of an individual) designated under the Act.

52. Such limited initiatives are unlikely to solve the global and daily encroachment on principles that have formed the backbone of international law and humanitarian actions. Rather than making vague references to international law, the Security Council should adopt a resolution expressly clarifying that humanitarian protection and assistance must never be conceptualized as support for terrorism and suppressed or criminalized on that basis. Additionally, it should mandate sector-wide exemptions within the sanctions regimes of the United Nations and Member States. In the meantime, States should issue similar express clarifications and clearly and unambiguously exempt humanitarian actions from their counter-terrorism measures at every possible opportunity, nationally, regionally and internationally.

V. Targeting of humanitarian aid to migrants

53. States are increasingly relying on the three pillars of militarization, extraterritorial border control and deterrence to shield their countries from irregular migration. An added tactic is deterring humanitarian services for migrants at borders to prevent life-saving rescue missions and transportation and, within countries, to impede the provision of food, shelter, medical care and other services. Deterrence is achieved largely through the criminalization of such humanitarian services. Emboldened by Government actions, anti-migrant segments of the population threaten or attack those who are behind humanitarian acts.

54. Humanitarian services play a central role in preventing migrants' and refugees' unlawful deaths. By deterring those services through their criminalization or other measures, States violate their obligation to prevent, combat and eliminate arbitrary killings and the deprivation of life (resolution 71/198). Such deterrence measures based on the legal status of the beneficiaries exacerbate the risks to life, which are or should be known to States.

55. In adopting the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2000, States committed to the protection of the rights of migrants who have been smuggled. The Protocol proclaims the need to provide migrants with humane

[34] Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi, "Principles guiding humanitarian action", *International Review of the Red Cross: Humanitarian Debate: Law, Policy, Action*, vol. 97, No. 897/898, pp. 244–247 (2015).

treatment and full protection of their rights. It envisions cooperation with civil society, including NGOs, to ensure the proper training of State personnel in the protection of migrants' rights. It requires States to take all appropriate measures to preserve and protect the rights of migrants, including, in particular, the right to life. It obliges States parties to provide basic assistance to migrants and illegal residents in cases where their lives or safety have been endangered by reason of an offence established in accordance with the Protocol.

56. In September 2017, Member States reiterated their determination to save lives and committed to strengthening support for rescue efforts over both land and sea (resolution 71/1). In July 2018, they concluded negotiations on a global compact for safe, orderly and regular migration, in which they committed to saving lives and preventing migrant deaths and injuries, including through individual or joint search-and-rescue operations and the standardized collection and exchange of relevant information, assuming collective responsibility to preserve the lives of all migrants.

57. In situations where States are unwilling or unable to provide humanitarian relief themselves, they must let others provide such services. A range of practices may put the lives, health and safety of migrants at risk, including cruel, inhumane or degrading reception conditions and the denial of humanitarian assistance (A/HRC/37/34, para. 15). For this reason, States must not criminalize or otherwise penalize the provision of support or assistance to migrants.[35]

Protection of life at the border

58. States are targeting those engaged in search and rescue, utilizing two primary tactics. The first is to accuse humanitarian organizations of colluding with smuggling networks, a crime under most national laws. For example, an Italian prosecutor, Carmelo Zuccaro, opened an investigation into possible collusion between rescue vessels and smugglers,[36] and the Government of Italy confiscated the vessel of Jugend Rettet and accused its crew of collusion.[37] Moroccan authorities are investigating Helena Maleno for colluding with smugglers in directing rescue vessels to boats in distress.[38] To date, no evidence has been made public indicating that any humanitarian actor who has been charged has colluded with smugglers. It appears that Government officials are harassing humanitarian actors with baseless investigations and prosecutions to convince them and others to cease their work.

59. The second tactic has been to place administrative burdens on, and sometimes even to criminalize, humanitarian action on the border. To the extent that any justification is given, States argue that rescue creates a pull factor. In effect, States have co-opted the language of humanitarianism, claiming to protect lives by discouraging migrants from embarking on dangerous journeys. In making this argument, States ignore the push factors, the dangers within the countries of origin and transit. They ignore, and do not count, the potential deaths and suffering that would occur were migrants and asylum seekers forced to remain. This is an essentially out-of-sight, out-of-mind argument.

60. This second tactic includes the refusal of Italy and Malta to allow humanitarian vessels to dock, effectively keeping them out of commission while they wait to find a safe port at which to discharge the migrants. It includes similar efforts by Thailand to deter sea rescues of Rohingya. It includes the refusal to grant permits to human

[35] See also the Convention on the Rights of the Child, article 22.

[36] See Forensic Architecture Agency at Goldsmiths, University of London, "Blaming the rescuers", 2017.

[37] See Fekete, Humanitarianism.

[38] See Global Voices, "Spanish activist Helena Maleno's trial in Morocco is a 'way to intimidate' human rights defenders, her supporters say", 31 January 2018.

rights defenders on the United States border who wish to enter federal lands to leave water for migrants in the desert, as well as the prosecution of volunteers for littering when they succeed in leaving water. It includes a felony prosecution for harbouring migrants by providing shelter in or near the desert in the territory of the United States. All of those steps are designed to make rescue efforts more difficult.

61. Such official actions and critiques of humanitarian actions, relayed by the media, have been said to incite anti-immigrant, anti-refugee and anti-rescue sentiment, which in turn prompt more official actions undermining rescue. As one NGO reported, there has been a delegitimization and criminalization campaign, creating a toxic narrative that undermines rescue and that will result in more deaths.[39]

62. States that are attempting to prevent rescues on the discriminatory basis of the population's immigration status, and potentially its race, religion and ethnicity, are violating international human rights law (and maritime law for sea rescues). If other individuals — not undocumented migrants — needed help in the desert or at sea, States would encourage and direct such life-saving aid.

Provision of life-sustaining aid within countries

63. Many humanitarian organizations and actors help migrants and refugees once they have crossed the border by providing food, water, shelter, medical aid and other services. Much of this aid consists of individuals simply responding to the needs of another person found within their community.

64. Such responses go by numerous names. The Constitutional Court of France recently recognized the freedom to aid others, for a humanitarian purpose, without consideration of the regularity of their residency status, insisting that the French notion of "fraternity" is a constitutional principle. The Court left it to the legislators to balance the constitutional principle of fraternity with the sovereign right to control the border. Pope Francis uses the language of encountering the other, and urged individuals to "tear down the wall of comfortable and silent complicity".[40]

65. In many countries around the world, particularly in the global South, such humanitarian actions are both frequent and, to a large extent, protected. The majority of refugees in the global South live in urban centres (58 per cent), outside of formal camps. This includes four in every five Syrian refugees in Jordan.[41] Along with migrants, refugees settle themselves, thanks to host communities' gestures of life-saving solidarity. In fact, such acts of solidarity constitute the unspoken backbone of the international refugee assistance regime.

66. In the global North, in contrast, Governments have made it a crime to conceal or harbour "irregular" migrants, and there is no stated exemption for humanitarian actors. For instance, in the United States, one can be sentenced to serve up to 5 years in prison for harbouring an undocumented immigrant, while those acting for commercial advantage or private financial gain may receive a sentence of up to 10 years.[42] One volunteer, Scott Warren, is currently being prosecuted under this statute for having sheltered migrants in the desert. A law adopted recently in Hungary criminalizes the facilitation of illegal immigration, human rights advocacy and litigation support.

[39] See Forensic Architecture Agency, "Blaming the rescuers".

[40] Message of His Holiness Pope Francis for the "Second Holy See-Mexico Conference on International Migration", Vatican City, 14 June 2018.

[41] See Office of the United Nations High Commissioner for Refugees, "Syrian refugees living outside camps in Jordan", 18 March 2014.

[42] See Code of the Laws of the United States, 8 U.S.C. § 1324. Those who hire an undocumented minister or missionary are exempt.

67. Anti-immigrant vigilantes are also targeting human rights defenders, with officials often turning a blind eye to the harassment. In Lesbos, Greece, Philippa and Eric Kempson were spurred to action by the death of migrants near their home. They devoted time and money to saving lives and even rented a building to warm migrants arriving in boats to prevent deaths from hypothermia. In response, they received death threats, were threatened with prosecution and faced legal action seeking to prevent their use of the building, and now are apparently being evicted from their home.

68. States should exempt humanitarian assistance from laws prohibiting "assisted stay" on the basis that simply providing the basics of human existence — food, water, shelter, sanitation and clothing — should not be criminalized. In France, when the mayor of Calais attempted to ban the distribution of food to migrants, an administrative court in Lille overturned the ban. It also ordered the installation of toilets, showers and facilities for drinking water and threatened the mayor with fines if he disobeyed.[43] The court correctly found that the mayor had interfered in a serious and manifestly unlawful manner with the freedom to come and go, the freedom of assembly and, by preventing migrants from satisfying basic needs, the right not to be subjected to inhumane or degrading treatment, enshrined in article 3 of the European Convention on Human Rights.[44]

69. In compliance with their obligation to respect and protect the right to life, States must eliminate laws and policies that prevent humanitarian aid based on the immigration status of the beneficiaries and ensure that government officials at all levels do not harass humanitarian actors. They must also protect them from unlawful threats and the violence of private vigilantes.

"Humanitarian" smuggling

70. Humanitarians helping migrants actually cross the border would appear to present the most difficult case, as international law clearly grants States the right to control their borders. This difficulty is illusory. Slaves were smuggled out of the United States, Jews out of Europe and dissidents out of the Union of Soviet Socialist Republics. As the Constitutional Court of Canada found, "Humanitarian aid to fleeing people is not merely hypothetical; it is a past and current reality".[45]

71. Those drafting the Smuggling of Migrants Protocol recognized the need to protect humanitarian motivations by limiting the definition of smuggling to the procurement of illegal entry by a person who acts for a financial or other material benefit. Their specific intent was to exclude humanitarians from criminal prosecution. The financial or material benefit threshold was included

> in order to emphasize that the intention was to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties.[46]

72. Few Governments comply with this requirement. The Facilitators Package of the European Union, which comprises Directive 2002/90/EC and its Framework Decision 2002/946/JHA, directs member States to make it a crime for any person to intentionally assist entry or transit across a member State. It does not incorporate the

[43] See Fekete, Humanitarianism.

[44] See "Le Tribunal de Lille suspend l'arrêté interdisant la distribution de repas aux migrants", Defenseur des droits, 22 March 2017.

[45] See Supreme Court of Canada, *R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754.

[46] See *Travaux Preparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations publication, Sales No. E.06.V.5), p. 469.

concept of financial benefit, except with reference to irregular stay.[47] Member States have the option not to impose penalties in instances of humanitarian assistance. The Directive mandates that member States prosecute a person who for financial gain intentionally assists an individual to reside unlawfully within a member State. There is, however, no explicit humanitarian exception. According to a report by the Fundamental Rights Agency, all 28 member States make it a crime to facilitate irregular entry, but only 8 explicitly transpose the optional humanitarian clause into their national law.[48]

73. The European Commission acknowledged that the Facilitators Package was intended to put appropriate sanctions in place, while avoiding the risk of criminalizing the provision of humanitarian assistance to migrants in distress. It conceded that interfering with humanitarian aid, and thereby failing to assist those in need, would violate the Charter of Fundamental Rights of the European Union. Yet member States have continued to criminalize the provision of humanitarian aid. An investigation in Europe in 2017 documented the prosecution of 45 individual humanitarian actors under anti-smuggling or irregular entry laws in 26 separate actions in 2015 and 2016.[49] But a European Parliament study concluded that data on the rates of prosecution and conviction of those who provided humanitarian assistance to irregular migrants were largely lacking.

74. The international community determined, in promulgating the Smuggling of Migrants Protocol, that the real threat to global order was smuggling by criminal networks, not humanitarians. The Protocol exempts humanitarian acts carried out to protect migrant rights. As the Supreme Court of Canada found, when it effectively added a humanitarian exemption to the illegal entry law of Canada, "it would depart from the balance struck in the Smuggling Protocol to allow prosecution for mutual assistance among refugees, family support and reunification, and humanitarian aid". Only with a humanitarian exemption would the legislation reflect the values and principles of customary and conventional international law.[50]

75. It is unsustainable for States to prosecute and target people for acting on the human instinct to help others in need. Criminal laws are designed to encourage decent behaviour, not prosecute it.[51] States must reconsider their policies and base them on the prevention of arbitrary killings and unlawful deaths. Instead of targeting those who are protecting life, States should prosecute those endangering it, first and foremost the criminal networks that exploit and mistreat migrants and asylum seekers. This would be the best policy for deterrence.

VI. Criminalization of the provision of life-saving services to women and lesbian, gay, bisexual, transgender and intersex persons

76. The provision of humanitarian services to women and girls, as well as to lesbian, gay, bisexual, transgender and intersex populations, has been criminalized, deterred

[47] The decision not to require smuggling to involve a financial benefit apparently stems from difficulties in tracing financial flows connected to migrant smuggling (see European Commission, Commission staff working document on the REFIT (Regulatory Fitness and Performance Programme) evaluation of the European Union legal framework against facilitation of unauthorized entry, transit and residence: Facilitators Package, 22 March 2017).

[48] See European Union Agency for Fundamental Rights, "Criminalisation of migrants in an irregular situation and of persons engaging with them", 2014.

[49] See Fekete, Humanitarianism.

[50] See Supreme Court of Canada, *R. v. Appulonappa*.

[51] See Fekete, Humanitarianism.

or stigmatized. Laws, policies and practices that impede the work of those providing essential sexual and reproductive health services can lead to discrimination, and have consequences for beneficiaries' pursuit of the right to life. There is conclusive evidence that efforts to cut back on or deter the provision of quality contraceptive and antenatal services, HIV/AIDS treatment and safe abortion care contribute to increased rates of otherwise preventable death, including maternal and infant mortality and death and injury from unsafe abortion.[52]

77. The most recent and wide-ranging example, the so-called gag rule of the United States, entitled "Protecting Life in Global Health Assistance" (May 2017), is of a scale that is unprecedented. It requires foreign actors receiving assistance from the United States to certify that they do not use their own non-United States funds to provide abortion services, counsel patients about it or refer them for abortion or advocate for the liberalization of abortion laws. Exceptions to the rule, also in place under previous versions of the global gag rule, are not widely known, understood or acted upon. The rule covers health-related activities in about 60 low- and middle-income countries, including programmes on HIV/AIDS, Zika virus, maternal and child health, malaria and nutrition.[53] Up to $9.5 billion in global health aid is subject to the rule, with sub-Saharan Africa, the largest recipient, being hit the hardest.

78. The global gag rule, flawed on evidentiary and public health grounds,[54] imperils the work of health-care providers, interferes with their freedom to practise to the level of recognized professional standards and erodes the integrity of health systems and services. In low-income settings, for example, integrated or co-located health programmes must now dismantle "all-in-one" services and dissolve integrated care networks while meeting an additional administrative burden of proving compliance with an overly broad, confusing and poorly defined policy whose obligations and methods of compliance are also unclear, as established in an evaluation undertaken by the United States Agency for International Development.

79. The gag rule imposes an unconscionable choice on providers who depend on global health aid to deliver essential services: to abandon the provision of legal, technically sound and life-saving services and no longer provide adequate, accurate and unbiased information, or to face potentially drastic reductions in funding that would mean shutting down life-saving services, firing staff and closing clinics. Those who find the means to continue to provide services targeted by bans may also face — as do their clients — additional social stigma and negative pressure from other providers and officials generated by the gag rule. The gag rule thus also distorts the balance of care, seeking to silence those who wish to speak frankly and competently about, or wish to advocate for, legal and safe abortion while giving an advantage to those who wish to organize in opposition to abortion.

80. The main outcome of such a policy is likely to be an increase in the number of unlawful deaths, particularly of women and girls, but not only that.[55] The World Health Organization estimated in 2011 that, during the last period of time in which the global gag rule was imposed far more narrowly, the average number of, largely

[52] See Guttmacher Institute, "Adding it up: investing in contraception and maternal and newborn health, 2017", 2017.

[53] See Sneha Barot, "When antiabortion ideology turns into foreign policy: how the global gag rule erodes health, ethics and democracy", *Reproductive Health in Crisis*, Guttmacher Policy Review special series, vol. 20 (Guttmacher Institute, 8 June 2017).

[54] See Jerome A. Singh and Salim S. Abdool Karim, "Trump's 'global gag rule': implications for human rights and global health", *The Lancet*, vol. 5, No. 4 (1 April 2017).

[55] See "Trump's 'Mexico City' Policy or 'Global Gag Rule'", Human Rights Watch, 14 February 2018.

unsafe, abortions rose 40 per cent in 20 countries. Another study found that countries most affected by the gag rule had significantly increased rates of induced abortions.[56]

81. Laws criminalizing same-sex relations, transgender identity (through laws prohibiting cross-dressing), prostitution and sex work and laws aimed at restricting public discussions of gender and sexuality, labelled by some States as propaganda against so-called traditional family values, have created a range of administrative, legal and social barriers to the provision of services directed at lesbian, gay, bisexual, transgender and intersex persons. The stigmatization or criminalization of such services has been interpreted by non-State actors as lending legitimacy to the violence they direct against humanitarian actors.

82. Such criminalization and crackdowns have hindered the ability of organizations to safely deliver services (see A/HRC/38/43, para. 59). They may be improperly charged with public incitement to crime or conspiracy.[57] Even if their work is not explicitly criminalized, the hostile application of national policy can effectively block or heavily restrict its scope. Criminalization and stigma can also stop lesbian, gay, bisexual, transgender and intersex persons from receiving life-saving treatment. They may be reluctant to access health-care services, such as treatment for HIV, and medical providers may refuse treatment when they are at risk of arrest for providing such services (ibid., paras. 53–54).

VII. Conclusion

83. **By failing to clearly exempt humanitarian actors from anti-terrorism statutes, Governments are knowingly reducing the provision of life-saving aid to desperate people. Such responses to terrorism also risk unwittingly eroding a normative pillar of international law. By harassing and prosecuting volunteers who rescue migrants on dangerous terrain or provide transportation, food and shelter to those in need, Governments are knowingly endangering lives. By criminalizing, stigmatizing or otherwise blocking the provision of sexual and reproductive services, States are knowingly depriving individuals, especially women, girls and lesbian, gay, bisexual, transgender and intersex persons, of life-saving care.**

84. **In all such actions, Governments are violating their obligation to respect and protect the right to life under international human rights and humanitarian law. Humanitarian actors, defined as individuals and organizations providing life-saving services and protection to vulnerable populations, are assisting States in meeting their obligations to protect and fulfil the inherent right to life, without discrimination, and to prevent the arbitrary deprivation of life. Humanitarian exemptions from prosecution, adopted by some States and recommended by international bodies, must be implemented as a matter of urgency. Harassment and stigmatization must cease. Saving lives is not a crime.**

VIII. Recommendations

85. **It is recommended that the Security Council:**

(a) **Adopt a resolution exempting humanitarian actions from all counter-terrorism measures, including sanctions, and insisting on a broad system of legal**

[56] See Eran Bendavid, Patrick Avila and Grant Miller, "United States aid policy and induced abortion in sub-Saharan Africa", *Bulletin of the World Health Organization*, 2011.

[57] See "Criminalization of human rights defenders", Inter-American Commission on Human Rights (OEA/Ser.L/V/II.Doc 49/15), 31 December 2015.

protection and normative safeguards under international human rights and humanitarian law;

(b) Specify in all counter-terrorism resolutions that no organization or person providing humanitarian relief should be punished on account of their delivery of such services to an alleged terrorist or a person who is a member of, associated with or supportive of a terrorist organization and that access to medical care and other life-saving relief by the latter should never be denied on the basis of such a designation;

(c) Reaffirm in no uncertain terms the fourth pillar of the United Nations Global Counter-Terrorism Strategy and the obligation of States to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

86. **It is recommended that the General Assembly include explicit language exempting and/or protecting humanitarian actions in resolutions on countering terrorism, migration and other relevant topics.**

87. **It is recommended that the Human Rights Council:**

(a) Include explicit language exempting and/or protecting humanitarian actions in resolutions on countering terrorism, migration and other relevant topics;

(b) Adopt a resolution calling for a thematic panel discussion on the human rights implications of the prevention of humanitarian work in the context of deterring migration and countering terrorism or violent extremism, and sexual and reproductive health;

(c) Recognize, in relevant resolutions, that an alleged terrorist or a person who is a member of, associated with or supportive of a terrorist organization should never be denied access to medical care on the basis of such designation, and that no person providing health services should be punished on account of the beneficiaries' designation.

88. **It is recommended that the Office of Counter-Terrorism:**

(a) Formally include civil society actors in all high-level United Nations counter-terrorism conferences;

(b) Establish a United Nations mechanism for strategic and sustained engagement with civil society, including humanitarian actors, around the agendas on countering terrorism and preventing violent extremism.

89. **It is recommended that States:**

(a) Publicly champion the work of humanitarian actors, whether they provide services in the context of conflict or migration or to women, lesbian, gay, bisexual, transgender and intersex persons or other populations;

(b) Recognize humanitarian action as a constitutional or national value and as the expression of the country's treaty obligations and/or of the common values of humanity;

(c) Adopt or revise national legislation on smuggling to explicitly exempt humanitarian action from its provisions, covering the facilitation of irregular entry, transit and residence, and ensure that no investigation is opened and no prosecution pursued against private individuals and organizations assisting migrants for humanitarian reasons;

(d) Review and amend legislation and policies on countering and preventing terrorism and violent extremism with a view to excluding from the scope of offences the provision of humanitarian services and the protection of

humanitarian access and actions and to ensuring that access to medical care of an alleged terrorist or a member or supporter of a terrorist organization should never be denied on the basis of such a designation and that no person providing health services should be punished on account of the beneficiaries' designation;

(e) Instruct armed forces and police that life-saving humanitarian services should never be denied and that individuals providing such care should not be arrested, harassed or intimidated;

(f) Facilitate regular dialogue among humanitarian organizations, banks, financial regulators and other government departments to limit the impact of counter-terrorism de-risking;

(g) Establish adequate systems to monitor the number of "humanitarian" prosecutions and convictions, as well as their effects;

(h) Remove impediments to the provision of comprehensive and high-quality sexual and reproductive health care, including safe abortion services, and take all reasonable measures to enable health-care providers to undertake their work without undue interference, intimidation or restrictions;

(i) Protect organizations and individuals providing life-saving services to lesbian, gay, bisexual, transgender and intersex populations against arbitrary and discriminatory restrictions and interference in their work.

90. It is recommended that donor Governments:

(a) Develop model safe harbours or exemptions to existing criminal and other laws and reconcile disparate approaches to the provision of humanitarian assistance, particularly in those areas where "terrorist" groups control territory or access to a civilian population;

(b) Appoint individual experts or establish working groups to monitor the protection of national and international humanitarian services;

(c) Explore innovative ways of minimizing the impact of counter-terrorism measures on humanitarian actions;

(d) Amend all aid funding provisions that seek to restrict or otherwise impede or deter the provision of and access to comprehensive and high-quality sexual and reproductive health services, information and support;

(e) Continue efforts to narrow the funding gap for comprehensive sexual and reproductive health services and support humanitarian actors that provide such services, including safe and legal abortion and services specific to the lesbian, gay, bisexual, transgender and intersex populations;

(f) Monitor and report regularly on the impact of the global gag rule and similar policies on actors providing sexual and reproductive services and on the right to life of women and girls, lesbian, gay, bisexual, transgender and intersex persons and the population in general.

91. It is recommended that donor countries and humanitarian actors establish joint forums, where they do not yet exist, and engage in open and inclusive dialogue about the impact on humanitarian action of counter-terrorism measures and measures to prevent or counter violent extremism, feeding into sector-wide policy developments.

92. It is recommended that humanitarian actors engage in sector-wide dialogues and develop sector-wide policies, proposals and advocacy positions on minimizing the impact of laws and measures seeking to prevent humanitarian services and access.